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The decision of United States District Judge Parker in the Hudson case has been overruled by the United States Supreme Court. This, it will be remembered, was the case wherein Judge Parker refused to obey a mandate of Mr. Justice White, one of the associate justices of the Supreme Court, ordering the former to take bail for Hudson who had been convicted below, pending the review of his case on writ of error in the Supreme Court. See 39 Cent. L. J. 275. Judge Parker held that bail was not allowed by the common law after conviction and sentence and that no statute of the United States is broad enough to authorize bail under such circumstances; that a bail bond taken in such a case would be invalid and not binding on either principal or sureties; and further that Mr. Justice White had not power under the rules of the Supreme Court of the United States to make an order in this case, for he was neither a circuit or district court of the circuit and district where Hudson was tried nor a justice or judge thereof. See opinion of Judge Parker, 65 Fed. Rep. 68.

The Supreme Court in a lengthy opinion written by Mr. Justice Gray (15 S. C. Rep. 450), demonstrate the fallacy of Judge Parker's conclusion. They hold that in view of Rev. St. §§ 1014-1016, providing that before trial bail "may be admitted" on all arrests in capital cases, and "shall be admitted" on all arrests in other criminal cases, and designating the courts and judges, including the justices of the Supreme Court, who may take the bail; and Act March 3, 1879, ch. 176, providing that on review by the Circuit Court of judgments in the District Court in criminal cases the circuit justice or the circuit judge may take bail; and Rev. Stat. § 1017, providing that on writ of error from the Supreme Court to a State court bail may be taken; and Act Feb. 6, 1889, ch. 113, § 6, providing for review by the Supreme Court on writ of error, under such rules and regulations as it may prescribe, of judgments of inferior courts of the United States in capital cases, such writ of error to be allowed as of right, and without the requirement of any security for prosecution of the same, or for costs, and to operate during its pendency as a stay of proceedings on the judgment—it will be held that congress intended that under Act March 3, 1891, ch. 517, establishing the Court of Appeals, allowing appeals and writs of error from the circuit and district courts direct to the Supreme Court "in cases of conviction of capital or otherwise infamous crimes," as well as in certain other classes of cases, and declaring that "all provisions of law, now in force regulating the methods and system of review * * * shall regulate the methods and system of appeals and writ of error provided for in this act in respect of the Circuit Court of Appeals, including all provisions for bonds or other security," in cases of crimes not capital, at least, bail might be taken on writ of error by order of the proper court, justice, or judge. Mr. Justices Brewer and Brown dissent from this reasoning, though agreeing that the Supreme Court has power to admit to bail pending proceedings in error, deducing this right, however, solely from the grant of jurisdiction. Upon the subject of the power of Mr. Justice White to issue the order, it is held that any justice of the Supreme Court, having power, by the acts of congress, to allow a writ of error, issue the citation, take the security required by law, and grant a *supersedeas*, has the authority, as incident thereto, to order plaintiff in error to be admitted to bail, independently of any rule of court; that Rule 36 providing that an appeal or writ of error from a circuit or district court to the Supreme Court in the cases provided for by Act March 3, 1891, §§ 5, 6, may be allowed in term time or in vacation by any justice of the Supreme Court, or by any circuit judge within his circuit, or by any district judge within his district, and the proper security be taken, and the citation signed by him, and he may also grant a *supersedeas* and stay of execution or of proceedings, pending such writ of error or appeal, recognizes the authority of any justice of the Supreme Court to order plaintiff in error to be admitted to bail, notwithstanding paragraph 2, providing that,

where such writ of error is allowed in case of a conviction of an infamous crime, or in any other criminal case, under said sections, the Circuit Court or District Court or any justice or judge thereof, shall have power, after the citation is served, to admit the accused to bail. Mr. Justices Brewer and Brown dissent also from this.

NOTES OF RECENT DECISIONS.

CARRIERS OF PASSENGERS—INJURIES—UNAUTHORIZED ACT OF YARD MASTER.—In Chicago, St. P. etc. Ry. Co. v. Bryant, 65 Fed. Rep. 969, decided by the United States Circuit Court of Appeals for the Eighth Circuit it appeared that a yard master, after 6 P. M., on being relieved from duty, took a passenger car and engine to give himself and fellow-servants a free ride to and from a meeting of theirs, without notice or permission from any officer who had authority to permit the passage of such a train. It was held that such act not having been done in the course of the yard master's employment, but for his own ends exclusively, and without authority to carry passengers for the company, and he having no apparent authority except possession of the train, the company was not liable as to a passenger for injury to one on the train. The court said in part:

The vital issue in this case was whether or not the deceased was a passenger of this company. The relation of a common carrier to its passenger is a contract relation. Whether or not such a relation existed between the company and the deceased depends primarily upon the question whether this yard master must be held to have been the agent of the company when he was operating this fatal train, for the company made no contract to carry the deceased unless it made it through this man. That this yard master had no actual authority to operate this train or make this contract is not denied, but counsel for the defendant in error, in support of their view, invoke the rule that as against third persons the principal is bound by the acts of the agent done in the course of his employment, not only when these acts are within the scope of his actual, but when they are within the scope of his apparent, authority. This rule, in our opinion, has no application to this case, for two reasons: First, the company never invested this yard master with any apparent authority to carry passengers on or to run this passenger train for it; and, second, he did not run this train in the course of his employment for the company, but for his own ends, when he was not engaged in serving his company. There is no doubt that a principal who holds his agent out to the world as the possessor of certain authority may be bound by the latter's acts within the scope of that authority, although he has secretly restricted it to narrower limits. The reason for the rule that the principal is bound by the acts of the agent within the scope of his apparent authority is that it is inequitable for a principal to induce strangers to enter into contracts with one that he gives the appearance of his agent, and to change their actions and relations on the faith of such agency, and then to deny that the agency was what he made it appear to be. The rule rests upon the principle of estoppel. It follows that the principal is bound only to the extent of the appearance he gives, or knowingly permits the agent to give, or might reasonably expect the agent to give, to the agency, and not by any appearance of agency beyond this that the agent himself wrongfully produces without the knowledge or consent of his principal. It is only acts within the scope of the apparent authority with which the principal clothes the agent, not those within the scope of the apparent authority with which the agent wrongfully clothes himself, without the assent or knowledge of his principal, that are binding upon the latter. Undoubtedly, the principal in conferring the authority upon his agent must be held to the rule of reasonable foresight, prudence and care, and may be bound by such acts of the agent as a reasonably prudent man would expect that his agent might appear to have the right to do, from the authority actually given. Tested by this rule, this yard master never had any apparent authority to carry passengers for this company on a wild train in the night, or in any other way, over any part of this railroad, without orders from or notice to the train dispatcher or some other superior who had the authority to permit and provide for it. The possession and control of the passenger coach gave him the only appearance of the authority to carry passengers that he had, and that coach he took, according to this record, without notice to and without the knowledge of any of the employees of the company who had the authority to permit it to run upon this road. Whatever appearance of authority the possession of this coach conferred upon him, then, was not bestowed upon him by the company, but was produced by his own act, without its knowledge or assent. Nor was there any act or permission of this company that any reasonably prudent man could have forseen would be likely to confer any apparent authority upon this agent to carry passengers for this company. The general authority of a freight yard master did not confer it. The specific authority of this yard master did not bestow it. The course of business and custom of years had never produced a single instance of its exercise by this employee without a special order from a superior officer who had the proper authority to direct it. How could this company judge of the future by the past? And who could have anticipated that a servant who had never had any authority to carry passengers, and who in a service of years had never carried one without a special order to do so from his proper superior, would seize a passenger coach and a switch engine, and run them, loaded with his fellow-servants, over the busiest and most dangerest part of this railroad, in the night, without notice to train dispatcher, superintendent or general manager, or any other officer that had authority to permit the passage of such a train or to clear the way for it? In our opinion, no one could have anticipated an act so foolhardy and unusual, and this was not an act within the scope of the apparent authority with which this company clothed this agent.

CRIMINAL LAW—LARCENY OF ANIMAL.—In Molton v. State, 16 South. Rep. 795, it is held by the Supreme Court of Alabama that in a prosecution for larceny, an instruction that defendant is guilty if, after he shot the hog he was near enough to it to exercise control over it with the intent to steal it is erroneous, as an actual possession by the defendant is essential to his guilt. Brickell, C. J., says:

The indictment is founded on the statute (Cr. Code, § 3789) which declares the larceny of a hog and of other domestic animals therein enumerated a felony, without regard to the value of the animal. On the trial the court instructed the jury in these words: "If a man shoots the hog of another with the intent to steal it, and kills the hog, and takes possession of it, he is guilty of larceny; or if he gets near enough to the hog to exercise dominion and control over it, after the killing, with the intent to steal it, he is guilty of larceny thereof." An exception was reversed to the instruction as a whole, and a separate exception to the last clause or member, commencing with the word "or." As a whole, the instruction is not erroneous. The first clause or member hypothesizes every fact essential to constitute larceny. The intent to steal, and the consummation of the intent by the taking possession, which of itself includes an asportation, are the essential elements of the offense of larceny, however it may be defined or prescribed. The last clause or member, however, seems to us erroneous. To constitute larceny, there must be a severance of the possession of the owner and an actual possession by the wrongdoer. The severance of the possession of the owner and the actual possession of the wrongdoer may be but for a moment; the length of time they continue is not important; but, as appreciable facts, they must exist. Rosc. Cr. Ev. (7th Ed.) 622; Frazier v. State, 85 Ala. 17, 4 South. Rep. 691; Thompson v. State, 94 Ala. 535, 10 South. Rep. 520; Wolf v. State, 41 Ala. 412; State v. Seagler, 1 Rich. Law, 30; State v Alexander, 74 N. C. 232. That the wrongdoer may be in such position or condition as enables him to exercise the power of taking and carrying away the thing alleged to be stolen is not sufficient. Until he avails himself of the position or condition, and exercises the power by the taking of possession, which, as we have said, involves an asportation, the offense is not complete, however evil may have been his intent. In State v. Seagler, *supra* (an indictment for the larceny of a hog), the facts were in all material respects similar to the facts of the present case, and it was held the offense was not complete unless the accused, after killing the hog, had taken possession of it. The court said, though the intent to steal was manifest, to constitute the offense there must be a carrying away, a removal of the goods from where they were, "and the felon must, at least for an instant, be in the entire possession of the goods." In State v. Alexander, *supra*, the court said: "To complete the crime of larceny, it is not sufficient that the defendant had the control of the article,—that is, had the power to remove it,—but there must be an asportation of the thing alleged to have been stolen. It is true a very slight asportation will be deemed sufficient; yet there must be some removal to complete the offense. The case here shows that there was no removal of the hog, but that it remained *in situ*, as it had been shot down." In Frazier v. State, *supra*, said Clopton, J.: "It is said generally that, to constitute the offense, there must be a wrongful taking possession of the goods of another, with the intent to deprive the owner of his property, either permanently or temporarily. The accused must have acquired dominion, so as to enable him to take actual custody or control, followed by asportation, which severs the property from the possession of the owner to some appreciable extent." In Thompson v. State, *supra*, said Walker, J.: "To constitute larceny, there must be a felonious taking and carrying away of personal property. There must be such a caption that the accused acquires dominion over the property, followed by such an asportation or carrying away as to supersede the possession of the owner for an appreciable period of time. Though the owner's possession is disturbed, yet the offense is not complete if the accused fails to acquire such dominion over the property as to enable him to take actual custody or control." The accused may, with the intent to steal, have killed the hog, and may have been near enough to take possession and carry it away; yet the offense of larceny was not complete until the possession of the owner was severed by the taking of actual possession by the accused. If the expressions in the opinions in the cases of Edmunds v. State, 70 Ala. 8, and Croom v. State, 71 Ala. 14, to which we are referred, assert a contrary doctrine, we cannot adhere to them. The last clause of the instruction is erroneous, and the judgment must be reversed, and the cause remanded.

GARNISHMENT—MUNICIPAL CORPORATION—EXEMPTION—WAIVER.—That exemption from process of garnishment is a privilege which a municipal corporation may waive at its option, has been decided in several cases, but the weight of authority appears to be *contra* and in accord with a recent decision of the Supreme Court of Utah in Van Cott v. Pratt, 39 Pac. Rep. 827, where it is held that a statutory exemption of a municipal corporation from garnishment cannot be waived by the municipality by an ordinance consenting that moneys in its hands may be garnished in suits between private parties. The following is from the opinion of the court:

This court, in the case of Chamberlin v. Watters (Utah), 37 Pac. Rep. 566, held that section 3455, Comp. Laws Utah 1888, authorizing garnishment of corporations, did not apply to a municipal corporation, and that such a corporation could not be subjected to such proceedings upon any principle of public policy. If, then, as this court has held, the process of garnishment is without statutory authority, and in violation of public policy, when it is sought to be enforced against a municipality, how can such municipality waive the exemption? Such exemption is not a mere privilege, as claimed by counsel for the appellant. It is a legal right, which inures to the benefit of the public. It is not upheld for the benefit of the public officer, but because the public must not be inconvenienced or harrassed by such proceedings in suits in which it has no interest, and have the management of its affairs and the efficiency of its officers in-

terfered with for the benefit of the private individual. The question of the liability of municipal corporations to process of garnishment at the suit of a private party has often been before the American courts, and, while their decisions are not uniform, still it seems that a large majority of the cases hold that no such liability exists, and the reason of the rule declared by those cases appears to rest upon that public principle which exempts members of the legislature, foreign ministers, embassadors, and other public functionaries, while in the public service, from civil arrest or other legal embarrassment at the suit of a private person. The exemption is granted from public necessity, in order that the business of the municipality may be transacted by its officers without interference arising from suits in which the public is not interested; and a municipal corporation cannot waive such a right by ordinance or by previous agreement. Courts will disregard all agreements or arrangements made in contravention of public policy. Wade, in his treatise on Attachment and Garnishment (volume 2, § 345), says: "The foundation of the doctrine that municipal corporations cannot be called upon to answer as garnishees is purely a question of public policy. They are regarded as integral branches of the government, exercising only public functions, and intended to guard public interests. To permit them to be subjected to actions, and possible judgments and expense, in relation to matters in which they have no interest, it is claimed would be an intolerable burden, in view of the large number of persons who necessarily stand toward them as creditors. To turn them into mere instruments for the collection of private debts, it is thought, would detract from their dignity, and be subversive of the public interest." In Merwin v. City of Chicago, 45 Ill. 133, where the question was whether a municipal corporation in that case was liable to the process of garnishment, Mr. Justice Lawrence, delivering the opinion of the court, said: "A municipal corporation cannot be properly turned into an instrument or agency for the collection of private debts." 8 Am. & Eng. Enc. Law, p. 1135; School Dist. v. Gage, 39 Mich. 484; Wallace v. Lawyer, 54 Ind. 501; First Nat. Bank v. City of Ottawa (Kan.), 23 Pac. Rep. 485; Crane v. French, 38 Miss. 503; Oscanyan v. Arms Co., 103 U. S. 261; McLellan v. Young, 21 Am. Rep. 276; Manufacturing Co. v. Gormully, 144 U. S. 224, 12 Sup. Ct. Rep. 632; U. S. v. Trans-Missouri Freight Ass'n, 58 Fed. Rep. 58, 7 C. C. A. 15.

PRINCIPAL AND SURETY—RELEASE OF SURETY—AGREEMENT FOR EXTENSION.—In Benson v. Phipps, the Supreme Court of Texas decides that an agreement between the maker of a note and the payee that the latter will extend the time of payment, and that the former will pay interest during the time extended, is binding without additional consideration, and will release a surety who does not consent to the extension. Gaines, C. J., says in part:

It is the right of the surety, at any time after the maturity of the debt, to pay it, and to proceed against the principal for indemnity. This right is impaired if the creditor enter into a valid contract with the principal for an extension of the time of payment. The obligation of the surety is strictly limited to the terms of his contract, and any valid agreement between the creditor and the principal, by which his position is changed for the worse, discharges his liability. For this reason it is universally held that a contract between the two, which is binding in law, by which the principal secures an extension of time, releases the surety, provided the surety has not become party to the transaction by consenting thereto. If the creditor is not bound by his promise to extend, it is clear there is no release. In order to hold him bound by his promise, there must be a consideration. Whether a mere agreement for an extension by the debtor is sufficient to support a promise to extend by the creditor is a question upon which the authorities are not in accord. We are of opinion, however, that the question should be resolved in the affirmative, at least in cases in which it is contemplated by the contract that the debt should bear interest during the time for which it is extended. If the new agreement were that the debtor should pay, at the end of the period agreed upon for the extension, precisely the same sum which was due at the time the agreement was entered into, the case might be different. But a promise to do what one is not bound to do, or to forbear what one is not bound to forbear, is a good consideration for a contract. In case of a debt, which bears interest either by convention or by operation of law, when an extension for a definite period is agreed upon by the parties thereto, the contract is that the creditor will forbear suit during the time of the extension, and the debtor foregoes his right to pay the debt before the end of that time. The latter secures the benefit of the forbearance; the former secures an interest bearing investment for a definite period of time. One gives up his right to sue for a period, in consideration of a promise to pay interest during the whole of the time; the other relinquishes his right to pay during the same period, in consideration of the promise of forbearance. To the question why this is not a contract, we think no satisfactory answer can be given. It seems to us it would be a binding contract, even if the agreement were that the debt should be extended at a reduced rate of interest. That an agreement by the debtor and creditor for an extension for a definite time, the debt to bear interest at the same rate, or at an increased, but not usurious, rate, is binding upon both, is held in many cases, some of which we here cite: Wood v. Newkirk, 15 Ohio St. 295; Fowler v. Brooks, 13 N. H. 240; Davis v. Lane, 10 N. H. 156; Stallings v. Johnson, 27 Ga. 564; Robinson v. Miller, 2 Bush, 179; Reynolds v. Barnard, 36 Ill. App. 218; Chute v. Pattee, 37 Me. 102; Rees v. Berrington, 2 Ves. Jr. 540. See, also, Crossman v. Wohleben, 90 Ill. 537; McComb v. Kittridge, 14 Ohio, 348.

In many cases which seemingly support the contrary doctrine, there was a mere promise by the creditor to forbear, without any corresponding promise on part of the debtor not to pay during the time of the promised forbearance. In such cases it is clear that there is no consideration for the promise. In others, where there was a mutual agreement for the extension, it may be that interest during the period of extension was not allowed by law, and the agreement did not provide for the payment of interest. The case of McLemore v. Powell, 12 Wheat. 554, may have been of that character. In this case, as we construe the correspondence between Hosack and the defendant in error, there was a request for an extension of the debt for 12 months on part of the former, and an unconditional acceptance on part of the latter. We infer that Hosack must have written something about the payment of accrued interest,—probably that he

hoped to be able to pay in 60 days. The presumption is that the letter was in the possession of the defendant in error at the time of the trial. He did not produce it. In any event, he should have known its contents, and if Hosack made his request for an extension conditional upon his payment of the accrued interest, he should have testified to the fact. We conclude, therefore, that there was a binding promise for an extension, and that the plaintiff in error was therefore released. Upon a careful examination of our own reports, we have found no decision of our court which is in conflict with the opinion herein expressed. There are a few cases which seem not to be in accord with our conclusions, but we think the conflict is only apparent. In Gibson v. Irby, 17 Tex. 173, the maker of the note sued on pleaded that the payee had promised him that the note should not be due and payable until the defendant had time to gather his crop, on condition that the defendant would then promptly pay the money and interest. The Supreme Court affirmed the ruling of the trial court in sustaining an exception to the plea, upon the ground that the plea showed no consideration for the promise. This ruling was correct, but if it had been pleaded affirmatively that the defendant had promised the payee that he would not claim the right to pay the debt before his crop was gathered we think the plea would have been good. In Claiborne v. Birge, 42 Tex. 98, Birge was the surety of one Urquhart upon three promissory notes, which fell due at different dates. After two of them had matured, Urquhart executed a written promise to the holder "to pay two per cent. per month interest on the • • • notes after maturity of the same." The evidence failed to show that the holder agreed to give an extension. It was held that Urquhart's promise was void, and that the surety, was not released. They are some expressions in the opinion in that case which do not accord with our views, but which were not necessary to its decision. In Payne v. Powell, 14 Tex. 600, it is held that an agreement to extend, in consideration of a promise to pay usurious interest, is not binding upon the debtor, and therefore is not binding on the creditor, and that accordingly the surety was not released. On the other hand, it is determined in Knapp v. Mills, 20 Tex. 123, that an agreement to pay interest at any increased rate, which is not usurious, is sufficient to support a contract for an extension.

FOREIGN FIRE INSURANCE COMPANY—FAILURE TO COMPLY WITH REGULATIVE STATUTE.—In Rose v. Kimberly & Clark Co., 62 N. W. Rep. 526, it was held that a contract by a foreign insurance company insuring property in Wisconsin necessarily involves the doing of business in that State, within the meaning of a statute providing that, except on certain conditions, no foreign fire insurance company shall "directly or indirectly take risks or transact any business of insurance in this State;" and that assessments on the policy holder cannot be recovered, though the contract was executed outside the State. The court said:

The insurance contracts in question were made outside of this State upon property within the State, by a foreign company which had not complied with the laws of Wisconsin, and was thus debarred from doing business within the State. The question arising is not whether these contracts can be enforced in the courts of Illinois where they were made. It might well be that, were this action pending before an Illinois court, it would be held that, the contracts being Illinois contracts, and there being nothing in the statutes or policy of that State prohibiting them, they would be held valid and binding. Such, in substance, was the ruling of this court in the case of Seamans v. Knapp, decided at last term (61 N. W. Rep. 757), where a contract made in Wisconsin insuring property in Missouri by a Wisconsin insurance company which had no license to transact business in Missouri was upheld. But it is obvious that that decision does not reach or control this case. The question here presented is whether the courts of this State will enforce a contract plainly and squarely opposed to the public policy and laws of the State. Doubtless the general rule of law is that a contract valid where made is valid everywhere, but this rule is not without exception. The provisions of our statutes which prescribe the conditions upon which alone foreign insurance companies may do business within this State are very stringent and sweeping (Sanb. & B. Ann. St. secs. 1915-1919). They provide, in substance, that no foreign fire insurance company shall, directly or indirectly, take risks or transact any business of insurance in this State, except upon compliance with certain specified requirements. It is unnecessary to state what these requirements are in detail, but it is sufficient to say that they include, among other things, the filing of verified statements showing investments of capital in certain specified securities and to certain amounts, or, in lieu thereof, a deposit with the State treasurer of a certain amount of United States bonds; also, the payment of certain license fees, and the filing of various documents intended for the benefit and protection of policy holders within the State; and only upon compliance with all these requirements is the commissioner of insurance authorized to issue the license which authorizes the doing of business within this State. The object of this statute is so plain that it cannot be mistaken. It is to protect our citizens against irresponsible and worthless foreign companies of the very kind which we have now before us. The evil to be corrected is not the writing of a policy by an unlicensed company within the State alone, but the writing of such a policy at all.

Bearing in mind the object of the statute and the evil to be corrected, it is very plain that the object will be largely defeated, and the evil will flourish as before, if it be held that companies without license can establish their agencies just outside of the State line and conduct their business by mail. Now, it will be observed that the legislature was not content with providing that no unlicensed company should make a contract of insurance within this State, but provided that no such company should, directly or indirectly, take risks or transact any business of insurance in this State. The writing of a policy of insurance upon property situated within this State would seem pretty clearly to be, in some degree at least, the transaction of insurance business in this State, whether the policy be written just within or just without the State line. It was said in Stanhilber v. Insurance Co., 76 Wis. 285, on page 291, 45 N. W. Rep. 221: "A contract insuring property in this State necessarily involves the doing of business in this State, and hence is subject to the laws of this State." We regard the remark as entirely correct, and fully as applicable to the present case as to the Stanhilber case. It is not

meant by this that the legislature in question has extraterritorial effect, or that it will invalidate a contract made in Illinois, but simply that when that contract is a contract insuring property within this State it is against the policy of our law, and will not be enforced by the courts of Wisconsin unless the conditions prescribed by our law have been complied with. In no other way can the manifest purpose and intent of the statute be reached; any different construction would render the law of little effect.

RIGHTS OF BURIAL LOT AND CHURCH PEW OWNERS.

Burial Lots.—Rights of holders to own property in rights of sepulture in public cemeteries and under churches are peculiar, and are not very dissimilar from rights in church-pews, is merely an easement or license, or privilege and property.[1] Cemeteries and places of general sepulture are so far public that private interests in them are subject to the control of the public authorities having charge of the police regulations.[2] The purchaser of a lot in a cemetery belonging to a society for "burial purposes," does not carry with it any title to the land;[3] and a lot-owner's certificate does not confer upon him any title or estate in the soil,[4] but simply carries a right, exclusive of any and every person, to bury,[5] upon the subdivided plot assigned him as long as the ground is used for burial purposes.[6] Such right of burial is not an absolute right of property, but is a mere privilege or license to be enjoyed so long as the place continues to be used as a burial ground,[7] subject alike to the right to abandon the use of the premises for burial purposes,[8] and municipal control over it; and the right granted is revocable whenever public necessity requires.[9] Therefore it has recently been held that a statute directing a removal of the bodies without providing for compensation to the lot owners is constitutional.[10]

Church-pews—Assignment of.—Before the reformation in England, the body of the church was common to all parishioners; but after the reformation the practice arose of assigning particular seats or pews to individuals. This assignment of pews was a mere license, and was personal to the licensee, and all disputes concerning it were determined in the spiritual courts.[11] And while every parishioner has a right to a seat in the parish church, he cannot claim the right to have a particular pew assigned to his use.[12] A right to a pew can exist only by a grant parcebly out or by prescription.[13] At first the power of the seats or pews in the church was discretionary and was vested by common law in the ordinary, but by custom it came to be exercised by the church wardens, who were the representatives of the ordinary in that respect, and whose assignment of seats was presumed to have been made with the approbation and consent of the ordinary.[14]

[1] Sohier v. Trinity Church, 109 Mass. 1, 21; Buffalo City Cemetery v. Buffalo, 46 N. Y. 503; People v. St. Patrick's Cathedral, 21 Hun (N. Y.), 191.

[2] Sohier v. Trinity Church, 109 Mass. 1, 21; Coats v. New York City, 7 Cow. (N. Y.) 585, 604; Brick Presbyterian Church v. New York City, 5 Cow. (N. Y.) 538; Kincaid's Appeal, 66 Pa. St. 411, 5 Am. Rep. 377; See, Town of Lake View v. Rose Hill Cemetery Co., 70 Ill. 191; Woodlawn Cemetery v. Everett, 118 Mass. 354; Upjohn v. Richland Board of Health, 46 Mich. 542, 9 N. W. Rep. 845.

[3] Sohier v. Trinity Church, 109 Mass. 1, 21; Kincaid's Appeal, 66 Pa. St. 411, 5 Am. Rep. 377.

[4] Patridge v. First Independent Church, 39 Md. 638; Richards v. N. W. Protestant Dutch Church, 32 Barb. (N. Y.) 42, 20 How. (N. Y.) Pr. 317; *sub. nom.* Richards v. N. W. Dutch Church, 11 Abb. (N. Y.) Pr. 30; Windt v. German Reformed Church, 4Sandf. Ch. (N. Y.) 471; Pierce v. Methodist Episcopal Church, 4 Ohio, 515, 539; Went v. Methodist Protestant Church (N. Y. Sup. Ct.), 30 N. Y. Supp. 107.

[5] Kincaid's Appeal, 66 Pa. St. 411, 5 Am. Rep. 377, 380.

[6] People v. St. Patrick's Cathedral, 21 Hun (N. Y.), 191. Property of this kind, acquired by the common contribution of the members of an association, is subject to their common control. No separate interest is acquired; and such property is managed by the majority. Even a vote to divide gives to individuals no right to enforce any separate interest. Denton v. Jackson, 2 John. Ch. (N. Y.) 320, 329; Price v. Methodist Episcopal Church, 4 Ohio, 515, 540-1.

[7] See, Windt v. German Reformed Church, 4 Sandf. Ch. (N. Y.) 471; Craig v. First Presbyterian Church, 88 Pa. St. 42, 32 Am. Rep. 417; Kincaid's Appeal, 66 Pa. St. 411, 5 Am. Rep. 377, 381.

[8] Craig v. First Presbyterian Church, 88 Pa. St. 42, 32 Am. Rep. 417.

[9] Dwenger v. Geary, 113 Ind. 113, 14 N. E. Rep. 903, 12 West. Rep. 695; Richards v. N. W. Protestant Dutch Church, 32 Barb. (N. Y.) 42; Craig v. First Presbyterian Church, 88 Pa. St. 42, 32 Am. Rep. 417.

[10] Went v. Meth. Prost. Church, 30 N. Y. Supp. 157.

[11] State v. Trinity Church, 45 N. J. L. (16 Vr.) 230, 28 Alb. L. J. 111; See Presbyterian Church v. Andruss, 21 N. J. L. (1 Zeb.) 325, 329; Burnes' Eccl. L. tit. "Churches," ch. 27; Hook's Church Dict. tit. "Pews."

[12] State v. Trinity Church, 45 N. J. L. (16 Vr.) 230, 28 Alb. L. J. 111; Matter of Cathedral Church, 8 L. T. 861.

[13] See, Crisp v. Martin, L. R. 2 Pro. Div. 15, 19 Moak's Eng. Rep. 553; Bryan v. Whistler, 8 Barn, & C. 288, 15 Eng. C. L. 147; Griffin v. Dighton, 5 Best & S. 93, 117 Eng. C. L. 93; Morgan v. Curtis, 3 Man. & R. 389; Jarratt v. Steele, 3 Phill. 316; 2 Bl. Com. 428.

[14] 2 Bac. Abr. 242; 1 Burns Eccl. L. 359; Church Warden, 2; Woods Inst. 88-90.

As a consequence it has become the settled law of the English courts that church wardens have a discretionary power to appropriate the pews in the church, subject only to the control of the ordinary.[15] While it was formerly held in England[16] that a right to a pew may be acquired by prescription, it is thought that in this country an individual right to the occupation of a particular pew will not arise from an occupation of it for ever so long a time,[17] unless it is annexed to a house, and it appears that the pew was repaired by the claimant, and those under whom he claims for the prescriptive period.[18]

Rights of Pew-holders in Pews—English Doctrine.—In England, the freehold to the church being in the parson for the time being, the right which the pew-holder has in his pew is merely an incorporeal interest, and is in the nature of an easement in the lands of another,[19] entitling the party to a right to occupy the pew during divine services;[20] but does not confer the right to be in the pew at all times, or at any other time than when the church is open for church purposes.[21]

Same—American Doctrine.—In this country the title to pews in a church generally depends on the statutes enacted to regulate this kind of property. In some of the States church-pews are declared by statute to be an interest in real property,[22] while in others they are declared to be an interest in personal property. In the absence of statutes regulating such property, the interest of a party in a pew of a church, although a limited and qualified interest, is usually considered to be an interest in real property,[23] notwithstanding the ownership is simply that of an exclusive easement for special purposes,[24] being merely a right to occupy under certain restrictions.[25] They are regarded and treated as real property in all cases arising under the statute of frauds,[26] the statute of conveyances,[27] or of descent and distributions,[28] and

[15] See, State v. Trinity Church, 45 N. J. L. (16 Vr.) 230, 28 Alb. L. J. 111; Reynolds v. Monkton, 2 M. & Rob. 384; Matter of Cathedral Church, 8 L. T. 861.

[16] See, Morgan v. Curtis, 3 Mees. & R. 389.

[17] See, Boothby v. Baily, Hob; Stocks v. Booth, 1 Durnf. & E. (1 T. R.) 428, 1 Rev. Rep. 244, Wood's Inst. 90.

[18] State v. Trinity Church, 45 N. J. L. (16 Vr.) 230, 28 Alb. L. J. 111; See, Hook's Dict. tit. "Pews"; Wood's Inst. 90.

[19] Brumfitt v. Roberts, L. R. 5 C. P. 232; Woolcombe v. Ouldridge, 3 Add. 1; Mainwaring v. Giles, 5 Barn. & Ald. 356, 7 Eng. C. L. 198; Gully v. Bishop of Exeter, 4 Bing. 290, 294, 13 Eng. C. L. 508, 510; Reynolds v. Monkton, 2 M. & Rob. 384; Pettman v. Bridger, 1 Phill. 316; See, Daniel v. Wood, 18 Mass. (1 Pick.) 102, 11 Am. Dec. 151; Shaw v. Beveridge, 3 Hill (N. Y.), 26, 38 Am. Dec. 616.

[20] 2 Add. Eccl. 419.

[21] Brumfitt v. Roberts, L. R. 5 C. P. 232; Mainwaring v. Giles, 5 Barn. & Ald. 356, 13 Eng. C. L. 508; Ridout v. Harris, 17 Up. Can. C. P. 88.

[22] As in Massachusetts, outside of the city of Boston, Jackson v. Rounesville, 46 Mass. (5 Met.) 127; and in Vermont, O'Hear v. De Goesbriand, 33 Vt. 593, 80 Am. Dec. 653, 655.

[23] See, Succession of Gamble, 23 La. Ann. 9; Sohier v. Trinity Church, 109 Mass. 1; Jackson v. Rounseville, 46 Mass. (5 Met.) 127; Daniel v. Wood, 18 Mass. (1 Pick.) 102, 11 Am. Dec. 151; Gay v. Baker, 17 Mass. 435, 458, 9 Am. Dec. 159; Bates v. Sparrell, 10 Mass. 323; Presbyterian Church v. Addruss, 21 N. J. L. (1 Zab.) 325; St. Paul's Church v. Ford, 34 Barb. (N. Y.) 16; Viele v. Osgood, 8 Barb. (N. Y.) 130; Shaw v. Beverage, 3 Hill (N. Y.), 26, 38 Am. Dec. 616; Trustees' First Baptist Church of Ithaca v. Bigelow, 16 Wend. (N. Y.) 28; Church v. Wells, 24 Pa. St. 249; Howe v. Stevens, 47 Vt. 262; O'Hear v. De Goesbriand, 33 Vt. 593, 80 Am. Dec. 653, 655; Barnard v. Whipple, 29 Vt. 401, 70 Am. Dec. 422; True v. Morrill, 28 Vt. 672; Hodges v. Green, 18 Vt. 358; Kellog v. Dickinson, 18 Vt. 263. In the case of Brumfield v. Carson, 33 Ind. 94, 5 Am. Rep. 184, it is said that the right to use a church edifice to worship in when occupied by the church to which it belongs, it is an interest in real estate, and a contract therefor, to be valid under the statute of frauds, must be in writing, signed by the party to be charged.

[24] Daniel v. Wood, 18 Mass. (1 Pick.) 102; Gay v. Baker, 17 Mass. 438, 9 Am. Dec. 159; Church v. Wells, 24 Pa. St. 249; Sohier v. Trinity Church, 109 Mass. 1, 21; Citing, *Re* New South Meeting-house, 95 Mass. (13 Allen), 497, 502; Attorney-General v. Proprietors' Meeting-house in Federal Street, 69 Mass. (3 Gray), 1; Howard v. First Parish of North Bridgewater, 24 Mass. (7 Pick.) 138; Wentworth v. First Parish of Canton, 20 Mass. (3 Pick.) 344.

[25] Daniel v. Wood, 18 Mass. (1 Pick.) 102, 11 Am. Dec. 151; Gay v. Baker, 17 Mass. 434, 9 Am. Dec. 159.

[26] State v. Trinity Church, 45 N. J. L. (16 Vr.) 230, 28 Alb. L. J. 111; Voorhees v. Presbyterian Church, 17 Barb. (N. Y.) 103, Aff'd 8 Barb. (N. Y.) 135; Viele v. Osgood, 8 Barb. (N. Y.) 130; Trustees of the First Baptist Church of Ithaca v. Bigelow, 16 Wend. (N. Y.) 28; Barnard v. Whipple, 29 Vt. 401, 70 Am. Dec. 422.

[27] Rights in a pew can be transferred only in the manner provided for the transfer of real property. Barnard v. Whipple, 29 Vt. 401, 70 Am. Dec. 472; See Viele v. Osgood, 8 Barb. (N. Y.) 130.

[28] Bates v. Sparrell, 10 Mass. 323; First Baptist Church v. Bigelow, 16 Wend. (N. Y.) 28; O'Hear v. De Goesbriand, 33 Vt. 593, 80 Am. Dec. 653, 655; Barnard v. Whipple, 29 Vt. 401, 70 Am. Dec. 422. In the case of Freligh v. Platt, 5 Cow. (N. Y.) 494, the court say: "A sale of real estate *ex vi termini* means an absolute transfer of the property. But the sale of pews in a church is not a sale of real estate within the New York act regulating religious societies. By the grant of a pew the grantee acquires a limited usufructuary right only. He must use it as a pew in a house of worship, but has not an unlimited, absolute right. He cannot use it lawfully for purposes in-

a devise of a testator's real estate carries with it his pew rights.[29]

Limitation and Qualification of Property in Pew.—While the pew-holder has an absolute and exclusive right to the possession and enjoyment of his pew for the purposes of public worship as long as the house remains, and may maintain an action against a trespasser, or any persons who disturbs him in the possession or enjoyment thereof, or in any way infringes upon his rights thereto,[30] yet this interest in the pew is separate from the pew,[31] and is limited and qualified both as to the nature of the estate and the time and manner of enjoyment.[32]

As to Right of Occupancy of Pews.—The assigning or leasing of a pew does not confer upon the holder thereof the right to be in it at any other time than during public worship, or to occupy it for any other purposes than those of public worship,[33] and matters connected therewith, at meetings for temporal purposes—such as meetings of the society or congregation, held for temporal purposes, at which times it is thought the pewholder has a right to occupy his pew in preference to any one else.[34] Thus where the parish or society lends or hires the use of the meeting-house in which the pew is situated for purposes not connected with the public religious worship of the society or congregation which owns the house, it is thought that the use of the house extends to the use of the pews also, to the exclusion of the holders thereof.[35] In the case of Shaw v. Beveridge,[36] the court say that the owners of pews have an exclusive right to their possession and occupation for the purposes of public worship; not as an easement, but by virtue of their individual right of property therein, derived, perhaps, in theory at least, from the corporation represented by the trustees who are seized and possessed of the temporalities of the church. The owners hold and possess their particular seats in severalty, in subordination to the more general right of the trustees in the soil and freehold. These rights are distinct and separate; and neither do they, nor the respective possessions growing out of the enjoyment of them, necessarily conflict with each other.[37]

Law Regulating Pews.—At common law unless the right to a pew was an easement proper, that is, was appurtenant to some dominant tenement or estate, it was of purely ecclesiastical cognizance.[38] It is a well settled rule that courts of law will not interfere with the rules of a voluntary religious society, adopted for the regulation of its own affairs, unless to protect some civil right which is infringed by their operation.[39] It is said

compatible with its nature. The right, too, is limited as to time."

[29] Bates v. Sparrell, 10 Mass. 323; See, Succession of Gamble, 23 La. Ann. 9; Presbyterian Church v. Andruss, 21 N. J. L. (1 Zab.) 325.

[30] See, Gorton v. Hansell, 63 Mass. (9 Cush.) 127; Jackson v. Rounesville, 46 Mass. (5 Met.) 127; Sargent v. Pierce, 43 Mass. (2 Met.) 80; Kimball v. Second Parish of Rowley, 41 Mass. (24 Pick.) 347; Howard v. First Parish of North Bridgewater, 24 Mass. (7 Pick.) 138; Gay v. Baker, 17 Mass. 435, 9 Am. Dec. 159; Fisher v. Glover, 4 N. H. 180; Woodworth v. Payne, 74 N. Y. 196, 30 Am. Rep. 298; Wheaton v. Gates, 18 N. Y. 395; St. Paul's Church v. Ford, 34 Barb. (N. Y.) 16; Cooper v. Presbyterian Church, 32 Barb. (N. Y.) 222; Abernethey v. Society of Puritans, 3 Daly (N. Y.) 1; Heeney v. St. Peter's Church, 2 Edw. Ch. (N. Y.) 608; Shaw v. Beveridge, 2 Hill (N. Y.), 26, 38 Am. Dec. 616; Baptist Church v. Witherell, 3 Paige Ch. (N. Y.) 296, 302, 24 Am. Dec. 223; Price v. Methodist Episcopal Church, 4 Ohio, 515, 541; Howe v. Stevens, 47 Vt. 262; O'Hear v. De Goesbriand, 33 Vt. 593, 80 Am. Dec. 653; Perrin v. Granger, 33 Vt. 101; Kellogg v. Dickinson, 18 Vt. 266; Pettman v. Bridger, 1 Phill. Eccl. 316.

[31] See, Woodworth v. Payne, 74 N. Y. 196, 200; 30 Am. Rep. 298, 301; Shaw v. Beveridge, 3 Hill (N. Y.), 26, 38 Am. Dec. 616; Trustees of the First Baptist Church of Ithaca v. Bigelow, 16 Wend. (N. Y.) 28. Justice Miller says in Woodworth v. Payne, *supra*, that pews may be leased and held distinct from the fee.

[32] See, Kimball v. First Parish of Rowley, 41 Mass. (24 Pick.) 347; Daniel v. Wood, 18 Mass. (1 Pick.) 102, 11 Am. Dec. 151; Gay v. Baker, 17 Mass. 435, 9 Am. Dec. 159.

[33] First Baptist Society v. Grant, 59 Me. 245; Presbyterian Church v. Andruss, 21 N. J. L. (1 Zab.) 325; Erwin v. Hurd, 13 Abb. (N. Y.) N. C. 91; Craig v. First Presbyterian Church, 88 Pa. St. 42, 32 Am. Rep. 417; Jones v. Towne, 47 Vt. 262; Brumfitt v. Roberts, L. R. 5 C. P. 232.

[34] See Wall v. Lee, 34 N. Y. 141, 149; First Baptist Church of Hartford v. Witherell, 3 Paige Ch. (N. Y.) 296.

[35] See Jackson v. Rounesville, 46 Mass. (5 Met.) 127, 132.

[36] 3 Hill (N. Y.), 26, 38 Am. Dec. 616.

[37] Second Congregational Society of North Bridgewater v. Waring, 41 Mass, (24 Pick.) 304.

[38] Mainwaring v. Giles, 5 Barn. & Ald. 356, 7 Eng. C. L. 198; Spooner v. Brewster, 3 Bing. 136, 11 Eng. C. L. 75; Rogers v. Brooks, 1 Durnf. & E. (1 T. R.), 431; Stocks v. Booth, 1 Durnf. & E. (1 T. R.), 428, 1 Rev. Rep. 244.

[39] Chase v. Cheny, 58 Ill. 509, 11 Am. Rep. 95; 10 Am. Leg. Reg. 295; State v. Trinity Church, 45 N. J. L. (16 Vr.) 230, 28 Alb. L. J. 111. See People *ex rel.* Dilcher v. The German United Evangelical Church 53 N. Y. 103; Petty v. Tooker, 21 N. Y. 267; Robertson v. Bullion, 9 Barb. (N. Y.) 64; Gable v. Miller, 10 Paige Ch. (N. Y.) 627, 2 Den. (N. Y.) 492; Baptist Church of Hartford v. Witherell, 3 Paige Ch. (N. Y.) 296, 24 Am. Dec. 223; Sutter v. First Dutch Reformed

in the case of Baptist Church v. Withrell,[40] that over the church, as such, the legal tribunals do not profess to have any jurisdiction whatever, except to protect the civil rights of others, and to preserve the peace. All questions relating to the faith and practice of the church, and its members, belong to the church judicatories to which they have voluntarily subjected themselves. It follows that, where property and other substantial rights are not involved, the decisions of ecclesiastical courts are final, as they are the best judges of what constitutes an offense against the word of God and the discipline of the church.[41]

Same—Episcopal Church.—The English ecclesiastical law forms the basis of the law regulating the affairs of the Episcopal church in this country, and is in force, except as modified by statute and the usages and canons of the church.[42]

Same—Vestry's Control.—The vestry of an Episcopal church may control the occupancy of a pew, and where the right to occupy has been given by them, it is not alienable or transmissible, and where the pew is rented annually, the one renting it has at most only a leasehold interest for the term. The civil court will not review the action of vestrymen in excluding a member of the church from a particular pew; and this is true although they give no reason for their action, and do not give the complaining party a hearing.[43]

Same—Free Church.—It has been said that in a free church where no charge is made for the sittings, the trustees have power to determine where attendants at worship shall sit, and may by force remove one who persists in sitting in a place other than that assigned to him.[44]

Granting in Perpetuity in Pews.—The grant of a pew in a church edifice in perpetuity does not give to the pew-holder an absolute right of property, as in a grant of land in fee-simple, but a limited usufructuary interest merely,[45] being simply a right to occupy,[46] under certain restrictions,[47] the pew during public worship of the congregation,[48] and possibly of sitting therein at meetings of the society held for temporal purposes.[49] It was said by Brown, J., in the case of Wall v. Lee,[50] that the pew-holder cannot use his pew as a place from which to interrogate the clergyman and fix a quarrel upon him, or in any way interrupt the services; nor to impede or interfere with charitable or other collections taken up from the congregation assembled for religious worship.

Interest of Pew-Holders in Church Edifice and Lands.—Pews are held by very peculiar titles, which are a qualified and usufructuary right merely.[51] The interest in a pew, while

Church, 42 Pa. St. 503; German Reformed Church, 3 Pa. St. 282; Forbes v. Eden, L. R. 1 Sc. J. App. 568.

[40] 3 Paige Ch. (N. Y.) 296, 24 Am. Dec. 223. See Robertson v. Bullion, 9 Barb. (N. Y.) 64; Diffendorf v. Reformed Cal. Church, 20 John. (N. Y.) 12; Lawyer v. Cipperly, 7 Paige Ch. (N. Y.) 281.

[41] German Reformed Church v. Seibert, 3 Pa. St. St. 291. See Shannon v. Frost, 3 B. Mon. (Ky.) 250, 258.

[42] State v. Trinity Church, 45 N. J. L. (16 Vr.) 230, 28 Alb. L. J. 111; Lynd v. Menzies, 33 N. J. L. (4 Vr.) 162; Hoffman's Law of the Church, 14, 30, 34, 64.

[43] State v. Trinity Church, 45 N. J. L. (16 Vr.) 230, 28 Alb. L. J. 111.

[44] Sheldon v. Vail, 28 Hun (N. Y.), 354.

[45] See *Re* New South Meeting-House, 95 Mass. (13 Allen) 497, 502; Attorney-General v. Proprietors Meeting-house in Federal Street, 69 Mass. (3 Gray) 1; Howard v. First Parish in North Bridgewater, 24 Mass. (7 Pick.) 138; Wentworth v. First Parish in Canton, 20 Mass. (3 Pick.) 344; Daniel v. Wood, 18 Mass. (1 Pick.) 102, 11 Am. Dec. 151; Gay v. Baker, 17 Mass. 435, 438, 9 Am. Dec. 159; Wall v. Lee, 34 N. Y. 149; Wharton v. Gates, 18 N. Y. 395; Viele v. Osgood, 8 Barb. (N. Y.) 130; Freligh v. Platt, 5 Cow. (N. Y.) 494; Heeney v. St. Peter's Church, 2 Edw. Ch. (N. Y.) 638; White v. Trustees Methodist Episcopal Church, 3 Land. (N. Y.) 477, 481; First Baptist Church v. Witherell, 3 Paige Ch. (N. Y.) 296, 24 Am. Dec. 223; Craig v. First Presbyterian Church, 88 Pa. St. 42, 51, 32 Am. Rep. 417; Kincaid's Appeal, 66 Pa. St. 411, 5 Am. Rep. 377.

[46] See Wall v. Lee, 34 N. Y. 141, 149.

[47] Sohier v. Trinity Church, 109 Mass. 1. See *Re* New South Meeting-house, 95 Mass. (13 Allen) 497; Attorney-General v. Proprietors Meeting-House in Federal Street, 69 Mass. (3 Gray) 1; Howard v. First Parish in North Bridgeport, 24 Mass. (7 Pick.) 138; Wentworth v. First Parish in Canton, 20 Mass. (3 Pick.) 344; Daniel v. Wood, 18 Mass. (1 Pick.) 102, 11 Am. Dec. 151.

[48] First Baptist Society v. Grant, 59 Me. 245; Presbyterian Church v. Andruss, 21 N. J. L. (1 Zab.) 325; Jones v. Towne, 58 N. Y. 462, 42 Am. Rep. 602; Erwin v. Hurd, 13 Abb. (N. Y.) N. C. 91; Craig v. First Presbyterian Church, 88 Pa. St. 42, 51, 32 Am. Rep. 417; Howe v. Stevens, 47 Vt. 262; Brumfitt v. Roberts, L. R. 5 C. P. 232.

[49] Wall v. Lee, 34 N. Y. 141, 149; First Baptist Church of Hartford v. Witherell, 3 Paige Ch. (N. Y.) 296, 24 Am. Dec. 223.

[50] 34 N. Y. 141, 149.

[51] Sohier v. Trinity Church, 109 Mass. 1, 20: Citing *Re* New South Meeting-house, 95 Mass. (13 Allen) 497, 502: Attorney-General v. Proprietors Meeting-house in Federal Street, 69 Mass. (3 Gray) 1; Howard First Parish in North Bridgewater, 24 Mass. (7 Pick.) 138; Wentworth v. First Parish in Canton, 20 Mass. (3 Pick.) 344; Daniel v. Wood, 18 Mass. (1 Pick.) 102, 11 Am. Dec. 151; Gay v. Baker, 17 Mass. 434, 9 Am. Dec. 159.

in the nature of and treated as real estate, is incorporeal,[52] and carries with it no interest in the church edifice, or the land upon which the church stands.[53] The parish or society is the sole owner of the fee both of the soil on which the church building stands and of the building itself.[54] Though limited both as to extent and manner of enjoyment and as to duration, the estate a pew-holder has in his pew may be for years, for life, or even in fee; and may be held in consideration of a fixed sum, or periodical payment of a stipulated amount, or assessments either fixed and certain or uncertain.[55] The deed or contract under which a pew is held is the only criterion of the nature and extent of the estate,[56] as well as the extent of the power of the society to tax the holder thereof.[57] In the case of Gifford v. First Presbyterian Society of Syracuse,[58] a lease of a pew in a church contained a condition that the lessee and his assigns should pay to the trustees of the religious society, for the time being, all the taxes or assessments to be levied or assesed for the next ten years for the purchase of a bell or organ; nor are they in any one year to exceed ten per cent. on the original appraised value of said slips. This language was held to be general enough to cover the whole duration of the lease, and that it was the intention of the parties to limit the taxation to ten per cent. in each year while the estate should continue, and that the trustees were not authorized, at any time, to tax or assess upon the pew in question any more than at the rate of ten per cent. of the original and appraised value thereof.

Restriction, Use and Treatment of Pew.—Having no title in or to either the soil beneath his pew,[59] nor the space above it,[60] the pew-owner has no right to dig a vault under it nor erect anything over it without the consent of the owners or trustees of the church;[61] neither has he the right to decorate such pew according to his fancy and should he do so the trustees may efface the objectionable decoration, fill up the excavation beneath, or remove the obstruction above, which interferes with the equal enjoyment by others of the pews.[63]

Same—Abandonment, Sale, or Destruction of Church Edifice.—The fee to the land and the building being in the society, if the building should become useless or dilapidated, and is abandoned by the congregation as a place of worship, or is destroyed by fire or otherwise, the rights of the pew-holder are gone.[64] If the church edifice is sold and removed and a new structure erected, or the church and ground sold and removed and a new structure erected, or the church and ground sold and the site abandoned as a place of worship, the pew-holder is not entitled to a share of the proceeds.[65] He can neither compel the holding of divine services in the church, nor prevent the abandonment of it as a place of worship.[66] A court of equity will not, on the

[52] 3 Kent Com. (13th ed.) 402.

[53] See Fassett v. First Parish in Boylston, 36 Mass. (19 Pick.) 361; Daniel v. Wood, 18 Mass. (1 Pick.) 102, 11 Am. Dec. 151; Matter of Reformed Church, 16 Barb. (N. Y.) 237; Freligh v. Platt, 5 Cow. (N. Y.) 494; Abernethy v. Society of Church of Puritans, 3 Daly (N. Y.) 1, 4; Heeney v. St. Peter's Church, 2 Edw. Ch. (N. Y.) 608.

[54] Proprietors of Union Meeting-house v. Rowell, 66 Me. 400; Gay v. Baker, 17 Mass. 435, 9 Am. Dec. 159. See Jackson v. Rounesville, 46 Mass. (5 Met.) 127; Daniel v. Wood. 18 Mass. (1 Pick.) 102, 11 Am. Dec. 151; Trustees of First Baptist Church of Ithaca v. Bigelow, 16 Wend. (N. Y.) 28; Kincaid's Appeal, 66 Pa. St. 411, 5 Am. Rep. 377.

[55] See Gifford v. Presbyterian Soc., 56 Barb. (N. Y.) 114.

[56] First Methodist Episcopal Society v. Brayton, 91 Mass. (19 Allen) 149; Abernethy v. Society of Church of Puritans, 3 Daly (N. Y.) 1, 4.

[57] If the power of a religious society to assess a tax upon a pew is derived from and limited by the deeds of the society to the pew-owners, a tax assessed in part for purposes not specifically named in the deed is void. First Methodist Society v. Brayton, 91 Mass. (9 Allen) 248. See Mussey v. Bulfinch Methodist Society, 55 Mass. (1 Cush.) 163; Stetson v. Kempton, 13 Mass. 272, 7 Am. Dec. 145.

[58] 56 Barb. (N. Y.) 114.

[59] Gay v. Baker, 17 Mass. 435, 9 Am. Dec. 159.

[60] Kimball v. Second Parish of Rowley, 41 Mass. (24 Pick.) 347; Wentworth v. First Parish in Canton, 20 Mass. (3 Pick.) 344; Gay v. Baker, 17 Mass. 435, 9 Am. Dec. 159; Kellogg v. Dickinson, 18 Vt. 266, 273.

[61] Wentworth v. First Parish of Canton, 20 Mass. (3 Pick.) 345; Daniels v. Wood, 18 Mass. (1 Pick.) 102, 11 Am. Dec. 151.

[62] Church v. Wells, 24 Pa. St. 249.

[63] Kimball v. Second Parish of Rowley, 41 Mass. (24 Pick.) 347; Wentworth v. First Parish in Canton, 20 Mass. (3 Pick.) 344; Kellogg v. Dickinson, 18 Vt. 266, 273.

[64] Abernethy Society of Church of Puritans, 3 Daly (N. Y.) 1; Kincaid's Appeal, 66 Pa. St. 411, 5 Am. Rep. 377.

[65] Howe v. Stevens, 47 Vt. 262. See Wentworth v. First Parish of Canton, 20 Mass. (3 Pick.) 245, 246; Church v. Wells, 24 Pa. St. 249.

[66] Matter of Reformed Dutch Church, 16 Barb. (N. Y.) 237; Viele v. Osgood, 8 Barb. (N. Y.) 135; McNabb v. Bond, 4 Brad. (N. Y.) 7; Heeney v. St. Peter's Church, 2 Edw. Ch. (N. Y.) 608, 612; Van Houten v. First Reformed Dutch Church, 17 N. J. Eq. (2 C. E.

application of a pew-owner, enjoin the pulling down and rebuilding or removal of the church edifice by the trustees, whenever it shall be deemed expedient and proper.[67] If a congregation abandon its meeting house as a place of public worship, although it continue to be fit for that purpose, and erect a new one on a different site, it does not thereby subject itself to any liability to the proprietor or leaseholder of a pew in the old meeting-house, in the absence of any showing that the society acted wantonly or with any intention to injure him.[68]

Same—Changes and Repairs—Pew held in Subordination to Society's Title and Rights to Repair.—All interest in and right to a pew is held subordinate to the right of the society or corporation to make necessary changes or desired repairs,[69] alter the internal structure of the house, enlarge the building, remodel the pews, or remodel or rebuild the meeting-house itself, or tear it down and build a new structure elsewhere.[70] The convenience of the individual must, in such cases, be subject to the general convenience of the whole congregation, and whoever purchases or leases a pew, does so subject to this right of the society.[71] If the edifice becomes useless by reason of age and dilapidation, or thorough injury, and the house has to be repaired or the building torn down and a new one erected in the same place, or if from some necessary cause the location is changed, the old edifice sold and a new one erected on the new spot selected, the pew-holder's rights are gone, and he has no claim in law or equity.[72]

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Gr.) 126, 130; *Re* Brick Presbyterian Church, 3 Edw. Ch. (N. Y.) 155.

[67] See, Howard v. First Parish in North Bridgewater, 24 Mass. (7 Pick.) 138; Wentworth v. First Parish in Canton, 20 Mass. (3 Pick.) 344; Freligh v. Platt, 5 Cow. (N. Y.) 494, 496; Heeney v. St. Peter's Church, 2 Edw. Ch. (N. Y.) 612; Shaw v. Beveridge, 3 Hill (N. Y.), 26, 38 Am. Dec. 616.

[68] See, Fassett v. First Parish in Boylston, 36 Mass. (19 Pick.) 361; Voorhees v. Presbyterian Church, 8 Barb. (N. Y.) 152; *Re* Brick Presbyterian Church, 3 Edw. Ch. (N. Y.) 155; Kincaid's Appeal, 66 Pa. St. 411, 422, 5 Am. Rep. 377; First Baptist Church of Hartford v. Witherell, 3 Paige, Ch. (N. Y.) 296, 24 Am. Dec. 223; Bronson v. St. Peter's Church, 7 N. Y. Leg. Obs. 361.

[69] Sohier v. Trinity Church, 109 Mass. 1, 21; Van Houten v. First Dutch Reformed Church, 17 N. J. Eq. (2 C. E. Gr.) 126; Erwin v. Hurd, 13 Abb. (N. Y.) N. C. 91; Abernethey v. Society of Church of Puritans, 7 Daly (N. Y.) 1, 7; Solomon v. Congregation B'nai Jeshurun, 49 How. (N. Y.) 263; How v. Stevens, 47 Vt. 263; Greenway v. Hockin, L. R. 5 C. P. 104; Jones v. Towne, 58 N. H. 462, 42 Am. Rep. 602.

[70] Citing Sohier v. Trinity Church, 109 Mass. 1; Fassett v. First Parish of Boylston, 63 Mass. (19 Pick.) 361; Kimball v. Second Parish of Rowley, 41 Mass. (24 Pick.) 347; Daniel v. Wood, 18 Mass. (1 Pick.) 102, 11 Am. Dec. 151; Gay v. Baker, 17 Mass. 438, 9 Am. Dec. 159. See, Wentworth v. First Parish of Canton, 20 Mass. (3 Pick.) 344; Van Houten v. First Reformed Dutch Church, 17 N. J. Eq. (2 C. E. Gr.) 130; Voorhees v. Presbyterian Church, 8 Barb. (N. Y.) 135; Kincaid's Appeal, 66 Pa. St. 411, 5 Am. Rep. 363; Craig v. First Presbyterian Church, 88 Pa. St. 42, 32 Am. Rep. 417; Kellogg v. Dickinson, 18 Vt. 266. In Voorhees v. Presbyterian Church, 8 Barb. (N. Y.) 151, 17 Barb. (N. Y.) 103; 5 How. (N. Y.) Pr. 74, it is said that the right that a pew-holder acquires, under a lease thereof, is in subordination to the more general right of the trustees in the soil and freehold, and to repair and alter the church; and that he cannot, therefore, by an action to recover the possession of the pew from them, practically enjoin such repairs; that his remedy, if his repairs deprive him of his pew, as by placing the pulpit on its site, is by an action for damages.

[71] Jones v. Towne, 58 N. H. 462, 42 Am. Rep. 602; Fisher v. Glover, 4 N. H. 180.

[72] Kincaid's Appeal, 66 Pa. St. 411, 422, 5 Am. Rep. 377, 382.

LOTTERY — WHAT CONSTITUTES—PRIZES TO STIMULATE TRADE.

DAVENPORT V. CITY OF OTTAWA.

Supreme Court of Kansas, March 9, 1895.

The defendant was a partner in the firm of D. L. & Co., operating a large dry-goods store in the city of Ottawa. Said firm placed in its window a locked box, with a glass front, containing $25 in bills, and advertised that all persons buying goods in their store, and paying therefor 50 cents or more, would be given a key, and one and only one key would be given out which would unlock the box; that the person receiving the key which would unlock the box would be given the $25 from it. The defendant sold goods at the usual and ordinary prices, without extra charge on account of said key, to divers persons, for 50 cents and more, and gave to each of said persons a key, to which was attached a card stating in substance, the above offer: Held, that such transactions were in effect sales of merchandise and lottery tickets for an aggregate price, and that a conviction therefor under a city ordinance was right.

ALLEN, J.: The defendant, William Davenport, was arrested and brought before the police court of the city of Ottawa, charged with having permitted gambling to be carried on in a store kept by him in Ottawa, and with having offered for sale and sold lottery tickets. He was found guilty by the police judge, and fined five dollars on each of the two courts in the information. From this conviction he appealed to the district court, where a jury was waived, and the cause submitted to the court on the following agreed statement of facts: "First. At all times herein-

after mentioned the defendant was and is a partner in the firm of Davenport, Lathrop & Co., which firm is now and for several years last past has been operating a dry-goods store in good faith at No. 228 S. Main St., Ottawa, Franklin county, Kansas; that they have now, and at all times have had, a large and first-class stock of dry-goods, of the value of more than $10,000, and that they had in connection with said stock a good stock of millinery goods. Second. Said firm, some days prior to October 19, 1894, placed in its window a box about 18 inches long by 8 inches wide, with a glass front, in which box said firm placed, so that the same could be seen, $25 in U. S. bills. The said box is and was locked. The said firm then advertised and offered to the public that all persons buying goods in ther store to the amount of fifty cents or more, and paying for the same, would be given a small iron key, and that the person getting the key that opened said box would receive the $25, there being but one key given, or to be given out that would in fact unlock said box, and that no member of said firm or employee in said store should be entitled to or receive a key. That any person holding a key is permitted to try to unlock said box therewith at any time between December 26 and 31, 1894. Third. That on October 19, 1894, defendant sold to sundry persons dry goods out of said store for 50 cents and more, and received the pay therefor, and that upon selling said goods and receiving such pay he gave to such customers keys, that they might at the proper time try to unlock said box. That to each of said keys was attached a card, having printed thereon as follows; '$25.00 Free. In United States Notes. $25.00 Free. We have placed in our window a glass money box containing $25 in U. S. notes. We will give a key to every purchaser of 50 cts. or more. One key only will unlock the box. This may be the one. Keys may be tried any time between December 26 to 31, inclusive, 1894. Every one holding a key will be permitted to try and unlock the box, and the person holding the key that will unlock the box will be presented with the contents, $25.00, absolutely free, without restrictions or reserve. Keys will not be noticed unless attached to the original tag. No employee allowed to have any keys. Davenport, Lathrop & Co., Ottawa, Kansas. One-Price House. (Read the other side.) $25.00 Free. $25.00 Free. Davenport, Lathrop & Co. stands alone, no matter how low goods are priced elsewhere, you can always buy them cheaper of Davenport, Lathrop & Co. Visit our store, and get a key that may be worth $25.00 to you. After trying keys, please leave them at the store. (Read the other side.)' Fourth. At the time defendant delivered said keys and cards to said customers he did not know whether said keys, or either of them, would unlock said box. Fifth. The said firm and said defendant made no extra charge by reason of said keys, but sold the goods in the usual way, at the same price that such character of goods had been and was being by said firm and other merchants sold in the market in said city, at and prior to the time that said firm began, giving out said keys. The said firm made no charge, directly or indirectly for said keys, or for the privilege to which the holders of said keys were entitled, unless the purchase and payment of said goods be construed to be a charge."

The sections of the ordinance on which the prosecution was based are as follows:

"Sec. 40. It shall be unlawful for any person or persons to sell or offer for sale, in the city of Ottawa, Kansas, any lottery ticket or part thereof, or to print and publish in said city any advertisement of any lottery or of the sale of any ticket or part thereof in any lottery. Any person who shall do any of the acts declared unlawful in this section shall upon conviction thereof in the police court be fined in any sum not exceeding one hundred dollars or by imprisonment in the city prison not exceeding ninety days, or by both such fine and imprisonment."

"Art. II, sec. 13. It shall be unlawful for any person or persons to set up, open, keep or maintain any gaming or gambling house in the city of Ottawa, or lease or let any house or other building for the purpose of setting up or keeping therein gaming or gambling devices, or permit any description of gambling or playing any game of chance for money, goods or other valuable thing in any dwelling house, store, booth, tent, shop or other tenement building or place used, owned or occupied by any such person and any person who shall be guilty of any act declared unlawful in this section shall on conviction be fined in any sum not exceeding one hundred dollars."

The District Court also found the defendant guilty. From this judgment the defendant appeals.

The only question presented for our consideration by the record in this case is whether the defendant sold lottery tickets. Counsel or appellant contend that there are two indispensable elements in the offense. "(1) A pecuniary consideration paid; (2) a determination by chance what and how much he who pays money is to have for it." It is urged that the agreed facts show that the defendant was a merchant conducing a legitimate business, with a large stock of general merchandise, which he sold for the usual and ordinary prices, and that the scheme of giving the money in the box to whomsoever should chance to get the key that would unlock the box was merely in the nature of an advertisement to draw attention and custom to the defendant's store; that, inasmuch as the defendant received no more in any instance for his goods than their fair and usual market value, no compensation was paid for the chance, but that the keys to the box and the chance to obtain a prize were a free gift to his customers, which he had a perfect right to offer. This argument, while plausible, is not sound. The defendant adver-

tised his goods for sale. At the same time he advertised that to every purchaser of goods to the value of 50 cents or more, paying in cash therefor, a key would be given, and that the person receiving the key which would unlock the box should receive the $25 as a free gift. Each sale, then, was a sale, not of the goods, but of a chance to obtain $25. In this instance, it may be conceded that the main purpose of the defendant was to increase his legitimate business by this scheme, and that the sale of merchandise was not used merely as a cover for conducting a lottery. The purpose of the defendant undoubtedly was to attract attention and stimulate trade to his store; but this case must be determined by the legal principals applicable to it. Suppose that instead of a large stock of general merchandise, on which only moderate profits are made, the defendant kept only such articles as usually bear a very high percentage of profit, and instead of offering $25 had offered $1,000 on precisely the same terms as this $25 was offered, could any one doubt for a moment that those who are inclined to invest small sums for the purpose of gaining large ones would be likely to purchase articles for which they had no special need, merely with the hope of gaining the prize offered? Though the goods in such a case should be sold only at the regular retail price, the main business of the defendant would become that of selling chances to draw the $1,000, rather than meachandise for a legitimate profit. The key, with the card attached, was in substance and effect a lottery ticket. Purchasers were given to understand, whether truthfully or not does not affect the case, that one key, and one only, of those given out, would unlock the box, and that whoever chanced to get the proper key would get the money. It is said that no element of chance existed, because the right of the purchaser to obtain a prize was in fact absolutely determined the instant he received the key. If the key fitted the lock, the money was his from that instant. If it did not, it was not his. This contention is not sound, though specious. Neither buyer nor seller was supposed to know which was the true key to the box, and the fact would only be actually determined when the trial was made at the time appointed to unlock the box. But, even if we assume that the chance was determined when the sale was made, it would be equally a lottery, for the fortunate person would at once obtain a right to the prize, though he could not in fact get it until the time appointed. The unfortunate purchaser would at once receive his merchandise and his blank in the lottery. No sound distinction exists between principal involved in this case and that in the case of State v. Mercantile Ass'n 45 Kan. 351, 25 Pac. Rep. 984. The case of State, v. Mumford, 73 Mo. 647, is also directly in point. Prizes were offered to subscribers to the Kansas City Times, each subscriber receiving a ticket entitling him to praticipate in a drawing of prizes, and no extra charge above the ordinary subscription price being made. The Supreme Court of Missouri held this a lottery, and that subscribers to the newspaper bought at the same time, and for one and the same consideration, the newspaper and the ticket in the lottery. So, in this case, the purchaser, for one undivided price, bought merchandise and a ticket in the scheme which was to determine who should have the prize. These views are also upheld in the case of Hudelson v. State, 94 Ind. 426; U. S. v. Zeisler, 30 Fed. Rep. 499; Bell v. State. 5 Sneed, 507; Thomas v. People, 59 Ill. 160. Judgment affirmed. All the justices concurring.

NOTE.—The generally accepted definition of a lottery is that it is a scheme for the distribution of prizes and for the obtaining of money or goods by chance. People v. Noelke, 94 N. Y. 137; Randle v. State, 42 Tex. 580; Rolfe v. Dalmar, 7 Rob. 80; Commonwealth v. Sheriff, 10 Phil. 203. In Wilkinson v. Gill, 74 N .Y. 63, Church, C. J., said that a lottery is defined by Webster "a scheme for the distribution of prizes by chance or the distribution itself," and he defines "lot" as "that which causes, falls, or happens; that which in human speech is called chance, fortune or hazard," and to draw lots is "to determine an event by drawing one thing from a number whose marks are concealed from the drawer and thus determining an event." The language of Fulger, C. J., in Hull v. Ruggles, 56 N. Y. 414, may be adopted as a result of the accepted definitions, namely, "where a pecuniary consideration is paid and it is determined by lot or chance according to some scheme held out to the public what and how much he who pays the money is to have for it that is a lottery." Payment of prizes in money is not essential. Fleming v. Bells, 3 Oreg. 286; Bell v. State, 5 Sneed. 507. The authorities are generally agreed that in order to constitute the scheme a lottery a valuable consideration must be paid for the chance of obtaining a prize. Yellow-stone Kit v. State, 88 Ala. 196, 16 Am. St. Rep. 38; Cross v. People (Colo.), 32 Pac. Rep. 821. If a tract of land is divided into lots of unequal value and the lots sold to different purchasers at a uniform price and are distributed amongst those purchasers by drawing or lot, this transaction has been held a lottery. Seidenbender v. Charles, 4 Serg. & R. 160; Ridgeway v. Wood, 4 Wash. C. C. 123; Wooden v. Shotwell, 23 N. J. L. 465. It was held also to be a lottery where the payment of $5.00 by a member of the American Art Union entitled one to a chance of drawing a painting by means of names and numbers drawn from a box. Governors v. American Art Union, 7 N. Y. 239, 13 Barb. 577; Bennett v. American Art Union, 5 Sand. 614. A gift sale of books according to a scheme by which the books are offered for sale at prices above their real value, and by which each purchaser of a book is entitled in addition to a gift or prize is a lottery. State v. Clark, 33 N. H. 335. So also a gift sale establishment has been held to be a lottery. Dunn v. People, 40 Ill. 467. A ticket which purports to entitle the holder to whatever prize may be drawn by its corresponding number in a scheme called a prize concert, is a lottery ticket. Commonwealth v. Thatcher, 97 Mass. 583. Where packages of candy are sold in some of which coupons are placed which are cashed at a counter upon presentation, the drawing of such prizes being announced by the sounding of a gong, the scheme is a lottery. Commonwealth v. Sheriff, 10 Phil. 203. A sale of candy in boxes represented to contain besides the candy a prize of money

or jewelry, each purchaser selecting his box without knowing its contents, is a lottery. Holman v. State, 2 Tex. App. 610. The sale of packages of candy at more than their value and known as "prize packages" in some of which are tickets with the name of a piece of silverware upon them entitling the purchaser of a package containing such ticket to the article of silverware named, in addition to the package, is a lottery. Hull v. Ruggles, 56 N. Y. 424; State v. Lumsden, 89 N. Car. 572. Where ten cents is charged for the privilege of designating three numbers among a large number of other numbers and the person paying the fee is entitled to forty-six cents if two of the numbers designated are drawn, or nothing if two of them are not drawn, the scheme is a lottery. Trout v. State, 111 Ind. 499; Watson v. State, 111 Ind. 599. So the sale of a slip of paper having certain numbers which represent the purchasers right to a prize which may be drawn by such numbers in a game of chance, is a lottery. Wilkinson v. Gill, 74 N. Y. 63; Smith v. State, 68 Md. 168; State v. Rothschild, 19 Mo. App. 137. A scheme by which an association sells certificates or tickets for a certain small sum of money which entitles the person to a lead pencil and the right to select certain numbers which if drawn from a revolving wheel in which other numbers are placed entitle the purchaser to a sum of money much larger than the purchase price of the tickets, is a lottery. State v. Kansas Mercantile Association, 45 Kan. 351, 23 Am. St. Rep. 727. Prize tickets to induce subscriptions to a newspaper have been held to constitute a lottery. State v. Mumford, 73 Mo. 647. So also raffles at fairs. Commonwealth v. Manderfield, 8 Phil. 459. A public exhibition during which and as a part of the advertised proceedings presents were distributed among such of the audience as held tickets, which answered to the number called at will by the exhibitor, held to be a lottery. State v. Shorts, 32 N. J. L. 398. "Policy playing," has also been decided in New York to be a lottery. Wilkinson v. Gill, 74 N. Y. 63. "Auction pools," "French pools," and "combination pools," upon horse races, have been held lotteries. State v. Lovell, 39 N. J. L. 458. The publication of the offer of a gold watch to the person buying goods at a store to a certain amount and guessing nearest the number of beans in a glass globe, is an advertisement of a lottery. Hudleson v. State, 94 94 Ind. 426. In Long v. State, 73 Md. 527, a sale of parcels of coffee upon each of which was pasted a slip of paper having printed upon the underside thereof the name of some article of merchandise that the purchaser is entitled to, was decided to be a violation of the Maryland statute which prohibits "any scheme or device by way of gift enterprise of any kind or character whatsoever."

"Clubs" of 40 persons each were formed by a merchant tailer for the disposition of suits of clothing, each of the stipulated value of $40, by lot, under nominal contracts of purchase, the price to be paid in weekly installments of $1 each, such payments entitling the holders of tickets to participate in weekly drawings by lot, with the chance of accruing a suit at any drawing, without further additional payments. Held a lottery, within Pen. Code, sec. 282, defining a "lottery" to be a scheme for the distribution of property by chance among persons who have paid, or agreed to pay, a valuable consideration for the chance, whether called a "lottery," "raffle," or "gift enterprise," or by some other name. State v. Moren (Minn.), 51 N. W. Rep. 618. A scheme by which a corporation proposes to issue "$100,000,000 of bonds secured on its property, maturing 450 years after date, with interest at 6 per cent. per annum, payable, 2 per cent. semi-annually, the remaining 2 per cent. at maturity, with a provision that, at each semi-annual payment of interest, $400,000 shall be used to redeem bonds, to be designated by the trustee, at their maturity value,—that is, $1,000 for a $100 bond,—is a lottery.—McLanahan v. Mott, 25 N. Y. S. 892, 73 Hun, 131. A bond investment scheme, according to which only a limited few, who are determined by the order in which their applications are received, are certain to receive a return, and the rest are dependent for any return, and for the time thereof, upon the probability that the great majority will permit their bonds to lapse, in a scheme in which the prize is dependent on chance, and constitutes a "lottery," which it is criminal to advertise through the mails. United States v. MacDonald (D. C.), 59 Fed. Rep. 563, s. c., affirmed by U. S. C. C. of App., 63 Fed. Rep. 426. A scheme for increasing the circulation of a newspaper, whereby all paid-up subscribers receive numbered tickets corresponding to numbered coupons, which are drawn from a box by a blind-folded person, prizes to be given to the holders of certain tickets, is a lottery (26 Stat. 465), though every purchaser of a ticket is repaid its cost by receiving the paper. United States v. Wallis (D. C.), 58 Fed. Rep. 942.

HUMORS OF THE LAW.

In the good old days in Washington, a lawyer who was discussing a motion before his Honor, Judge Green, involving the question whether certain alleged facts amounted to fraud, in support of his contention read copious extracts from Browne on Frauds. In doing so, he constantly called the author's name Brown-e. This grated on the learned and critical ear of Judge Greene, who at last interrupted the counsel with the question, "Why do you pronounce that name Brown-e?" "It is spelled," answered our friend with charming gravity, "B-r-o-w-n-e; if that is not Brown-e I would like to know what it does spell?" "I spell my name," said the Judge "G-r-e-e-n-e! you would not call me G-r-e-e-ne would you?" "That depends," replied our friend, "on how your Honor decides this motion." The judge waived the contempt and joined in a general laugh.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ADMINISTRATION — Account—Allowance of Claim.—A judgment confirming an auditor's report in allowing a claim against an estate by decedent's daughter-in law, for board and funeral expenses, will be affirmed, where there was a contract that decedent was to pay therefor, and claimant's husband testified to the several items constituting the account.—IN RE HAMBLETON'S ESTATE, Penn., 31 Atl. Rep. 258.

2. ADMINISTRATION—Fraud of Executor.—An administrator *de bonis non* with the will annexed cannot maintain an action to invalidate an executed transaction between his predecessor and the defendant on the ground of fraud and collusion between them.—KNOBELOCH V. GERMANIA SAV. BANK OF CHARLESTON, S. Car., 21 S. E. Rep. 13.

3. ADMINISTRATION — Liability of Executor for Attorney's Fees.—Executors and administrators are personally liable for the services of attorneys employed by them, but their contracts therefor do not bind the estate, although the services are rendered for the benefit of the estate, and are such as the executor or administrator may properly pay for, and receive credit for the expenditure, in the settlement of his accounts.—THOMAS V. MOORE, Ohio, 39 N. E. Rep. 803.

4. ADMINISTRATION — Payment of Interest Bearing Debts.—Under Code Civ. Proc. § 1513, providing that an administrator may, at any time, on the order of the court, pay all interest bearing debts of decedent, the court cannot, on the application of a creditor, compel an advance payment.—IN RE HOPE'S ESTATE, Cal., 39 Pac. Rep. 523.

5. ADMINISTRATION—Settlement of Decedent's Estate—Accounting. — Where executors are also made trustees under the will, the two capacities are distinct and separate, and the executors, having duly qualified as such, cannot assume the rights and duties of trustees until the court has approved their accounts as executors, and ordered a distribution. — IN RE HIGGINS' ESTATE, Mont., 39 Pac. Rep. 506.

6. ADMINISTRATION—Tort of Executor.—A decedent's estate is not liable for the conversion by the executor of property claimed by him as part of the estate, the executor being personally liable. — VAN SLOOTEN V. DODGE, N. Y., 39 N. E. Rep. 950.

7. ADMINISTRATOR—Sale of Chattels.—An administrator who contracts in his own name to sell chattels belonging to the estate may sue in his own name for the price.—SEAVER V. WESTON, Mass., 39 N. E. Rep. 1013.

8. ADVERSE POSSESSION—Dower.—Where the widow of an intestate retains possession of the homestead, to which she is entitled until her dower is assigned, and conveys it to one of the heirs, his possession thereunder is not adverse to the other heirs.—GOSSELIN V. SMITH, Ill., 39 N. E. Rep. 980.

9. ADVERSE POSSESSION BY COTENANT. — The occupancy and exclusive enjoyment of land under a deed from one cotenant to the entire land is not adverse to the other cotenants when their interest in the land is recognized by the party in possession.—PRICE V. HALL, Ind., 39 N. E. Rep. 941.

10. ADVERSE POSSESSION OF PERSONALTY.—The exclusive adverse possession of personal property for two years, under claim of ownership, vests the title in the person so holding possession.—BOWYER V. ROBERTSON, Tex., 29 S. W. Rep. 916.

11. APPEAL—Judgment—Reversal.—Where, in an action against a railroad company for damages from the construction of its road, and to enjoin such operation till the damages are paid, the court awards plaintiff damages, but denies an injunction, and plaintiff appeals from that part of the judgment refusing an injunction, and neither party takes other exceptions, and the Appellate Court decides the refusal of an injunction error, and reverses the judgment, defendant is not entitled to a new trial on the question of injunction.—COOMBS V. SALT LAKE & FT. D. RY. CO., Utah, 39 Pac. Rep. 503.

12. APPEAL—Parties.—Under Code 1887, § 388, authorizing appeals to the Supreme Court, provided "the party" praying the appeal give bond, only a party to the record in the trial court can appeal.—FISCHER V. HANNA, Colo., 39 Pac. Rep. 420.

13. APPEAL—Record.—A general statement in a bill of exceptions that it contains all the evidence will not control, where it appears from the body of the bill that evidence is omitted therefrom.—RHEA V. CRUNK, Ind., 39 N. E. Rep. 879.

14. ARREST IN CIVIL ACTION—Recognizance.—Where an execution on a judgment in tort is returned unsatisfied before its return day, and on the same day an alias execution is issued, an arrest on the alias execution, made after the return day of the first execution, is legal.—CHESEBRO V. BARME, Mass., 39 N. E. Rep. 1033.

15. ASSIGNMENT—What Constitutes.—An assignment by one of the part of his estate for the benefit of certain of his creditors, and a conveyance of the remainder of his estate to another creditor in payment of his debt to such other creditor, does not constitute a general assignment, under Code, ch. 8.—MAYER V. MCREA, Miss., 16 South. Rep. 875.

16. ASSIGNMENT FOR BENEFIT OF CREDITORS—Validity.—An assignment for the benefit of creditors which includes a stock of merchandise is not void on its face because the trustee is authorized to sell and dispose of the property "in such manner as he may deem most beneficial to the interests of all concerned."—STONEBURNER V. JEFFREYS, N. Car., 21 S. E. Rep. 29.

17. ATTACHMENT— Action Arising on Contract.—An action on a money judgment, whether recovered for a tort or on a contract, is an "action arising on contract," within the meaning of section 4993, Comp. Laws, specifying the kinds of action in which attachments may be issued.—FIRST NAT. BANK OF NASHUA V. VAN VOORIS, S. Dak., 62 N. W. Rep. 878.

18. ATTACHMENT—Affidavit.—Where the affidavit in attachment purports to have been duly sworn to, before a proper officer, and the name of the affiant appears in

the commencement of the affidavit as "A B, being duly sworn, etc., the affidavit will be held sufficient although the signature of the affiant does not appear thereon.—SIMMONS HARDWARE CO. v. ALTURAS COMMERCIAL CO., Idaho, 39 Pac. Rep. 550.

19. ATTACHMENT—Dissolution.—Where anattachment is dissolved, the property is discharged from the levy, and must be returned to the defendant.—HAMILTON V. KILPATRICK, Tex., 29 S. W. Rep. 819.

20. ATTACHMENT—Intervention.—Where pending suit the goods attached were, by order of court, sold, and the proceeds deposited in court, one claiming title to the goods cannot, by intervention, obtain judgment against the plaintiff for the value of the goods alleged to have been illegally converted by said plaintiff.—WILLIAMS V. BAILEY, Tex., 29 S. W. Rep. 884.

21. ATTACHMENT BOND—Measure of Recovery.—Under 2 Code, § 293, providing that attachment bonds shall be conditioned that plaintiff will pay all costs that may be adjudged to defendant, and all damages he may sustain by "reason of the attachment," only the attachment costs can be recovered in a suit on the bond, and not the entire costs of the original suit.—HELFRICH V. MEYER, Wash., 39 Pac. Rep. 455.

22. ATTORNEY—Disbarment Proceedings—A defendant in a disbarment proceeding is not entitled to 20 days' time, and the time allowed to answer the ordinary summons under the Code, but may be cited to appear and answer within any time that gives him a reasonable opportunity to be heard.—IN RE BROWN, Okla., 39 Pac. Rep. 469.

23. ATTORNEY AND CLIENT — Liability of Attorney.—An attorney at law, with whom a deposit has been made for costs of suit, is responsible in damages to his client, if he permits the claim placed in his hands for suit to prescribe.—KING V. FOURCHY, La., 16 South. Rep. 814.

24. BAILMENT.—Where one who hires a horse and buggy to go to a certain town and return agrees to put the horse in a barn while at such town, but fails to do so, and the horse and buggy are stolen, he is liable to the owner for their value.—LINE V. MILLS, Ind., 39 N. E. Rep. 870.

25. BANKING — Clearing House—Security.—Securities deposited by a bank, belonging to a clearing-house association, with the clearing-house committee, and pledged according to the clearing-house regulations adopted by the associated banks, first for payment of its daily balances, and next as security for other indebtedness due to members of the association, will be held, after payment of daily balances, to meet a deficiency in other securities given by it to the clearing-house committee, to provide for payment of clearing-house certificates issued to aid in maintaining its credit.—PHILLER V. JEWETT, Penn., 31 Atl. Rep. 204.

26. BANKS—Lien on Stock.—Where there is a custom between brokers and bankers that, on application of a broker, a bank will certify as to whether it has any lien on certain of its stock by reason of the holder thereof being indebted to it, a bank, by being asked by a broker to give such a certificate, is thereby put on inquiry, and charged with notice, as much as though told that a loan for a certain amount had been or was to be made to the holder of the stock by a certain person.—COVINGTON CITY NAT. BANK V. COMMERCIAL BANK OF CINCINNATI, U. S. C. C. (Ohio), 65 Fed. Rep. 547.

27. BOUNDARY — Conclusiveness of Adjustment.—An adjustment by adjoining landowners of a disputed boundary line is conclusive upon them.—YOUNG V. WOOLETT, Ky., 29 S. W. Rep. 879.

28. BUILDING ASSOCIATION LOAN.—Though the by-laws of a building and loan association provide that no loan shall be made except to members, the fact that, on a loan being made to a member, the joint bond of the member and one not a member is taken, does not open to them the defense of *ultra vires*.—PEOPLE'S BLDG. & LOAN ASS'N OF SAGINAW COUNTY V. BILLING, Mich., 62 N. W. Rep. 373.

29. CARRIERS—Delivery.—In an action against a common carrier to recover for goods lost in transportation, it was error to refuse to charge that, if any of the goods were delivered to plaintiff's draymen by a carrier connecting with defendant's road, they should find for defendant for so much of the goods as were so delivered.—GULF, C. & S. F. RY. CO. V. LEWINE, Tex., 29 S. W. Rep. 835.

30. CARRIERS — Who are Passengers.—At a certain station defendant's train stopped only to allow passengers to get off. When it stopped for such purpose, persons who wished and were ready to take the train were permitted to do so. Plaintiff ran to catch the train, and attempted to board it just as it started, and was injured. It was dark, and he saw none of defendant's servants, and none of them saw him. The failure of the conductor to know that he intended to get on the train at the time he gave the signal for the engineer to start was not due to his or other trainmen's negligence: Held, that plaintiff had not been received or accepted as, and did not have the rights of, a passenger.—JONES V. BOSTON & M. R. R., Mass., 39 N. E. Rep. 1019.

31. CARRIERS OF LIVE STOCK — Measure of Damages.—In an action for injuries to cattle during transportation the measure of damages is the deterioration in market value at their place of destination, though at such destination it was intended to pasture them.—GULF, C. & S. F. RY. CO. V. STANLEY, Tex., 29 S. W. Rep. 806.

32. CARRIERS OF PASSENGERS—Alighting from Train.—Evidence that, before the train stopped, "L, change for B," was called by some one, was competent on the question whether plaintiff exercised due care, though it was not shown that such announcement was made by a railroad man.—FLOYTRUP V. BOSTON & M. R. R., Mass., 39 N. E. Rep. 797.

33. CARRIERS OF PASSENGERS — Breach of Contract—Damages.—In an action, *ex contractu*, for the violation of a contract, no punitory damages can be assessed in the absence of bad faith. When there has been no proof of actual damages, but loss of time and inconvenience has been shown, for the technical violation of the contract, compensatory damages of a nominal amount will be allowed.—JUDICE V. SOUTHERN PAC. CO., La., 16 South. Rep. 816.

34. CERTIORARI — Issue of Search Warrant.—The action of a magistrate in issuing a warrant, commonly called a "search warrant," upon complaint, will not be questioned or reviewed by *certiorari*.—STATE V. SPRINGER, N. J., 31 Atl. Rep. 215.

35. CHATTEL MORTGAGE OF MINOR.—A chattel mortgage is not enforceable against a minor mortgagor.—BARNEY V. RUTLEDGE, Mich., 62 N. W. Rep. 369.

36. CHECKS — Presentment for Payment.—A check drawn on bankers in Baltimore, dated January 11th, was received by the payee by mail on the 12th, and forwarded by the payee to its correspondent in Philadelphia, who received it on the 13th, and on the same day sent it to its correspondent in Baltimore, who received it on the 14th, and presented it for payment by 1 o'clock of the same day. If the check had been mailed by the payee on the 13th directly to Baltimore, it would have reached there on the 14th: Held, that the check was presented within a reasonable time, so as to render the drawer liable thereon in case of non-payment.—FIRST NAT. BANK OF GRAFTON V. BUCKHANNON BANK OF WEST VIRGINIA, Md., 31 Atl. Rep. 302.

37. COMPROMISE BY HEIRS—Administration.—Where plaintiffs' cause of action depends on the validity of a compromise by heirs of a judgment obtained by the administrator d. b. n., plaintiffs must allege, and the record must show, that the administration was closed.—CHAPMAN V. MANSFIELD, Tex., 29 S. W. Rep. 820.

38. CONSTITUTIONAL LAW — Adulteration of Vinegar.—Laws 1889, ch. 515, § 4, forbidding the manufacture or sale of vinegar containing any artificial coloring

matter, is constitutional, as a police regulation.—PEOPLE v. GIRARD, N. Y., 39 N. E. Rep. 823.

39. CONSTITUTIONAL LAW—Interstate Commerce—Taxation of Goods.—Coal transported to Louisiana from a foreign State on the navigable waters of the United States, and owned by a citizen of such foreign State, may be taxed while afloat in barges on the Mississippi river in Louisiana, as other property in such State is taxed, without violating Const. U. S. art. 1, § 8, cl. 3, providing that congress shall have power to regulate commerce among the States, where it has reached its destination for the purpose of use or sale.—PITTSBURGH & S. COAL CO. v. BATES, U. S. S. C., 15 S. C. Rep. 415.

40. CONSTITUTIONAL LAW—Jury Commissions.—The act of the general assembly requiring the common pleas judges of the several subdivisions of the common pleas districts of the State to appoint jury commissioners for the counties in their respective subdivisions, passed April 23, 1894 (91 Ohio Laws, 176), is not in conflict with any of the provisions of the constitution of the State, and is a valid law.—STATE v. KENDLE, Ohio, 39 N. E. Rep. 947.

41. CONSTITUTIONAL LAW — Limited Partnership.—How. St. § 2366, relating to limited partnerships, and providing that, if execution against the association is returned unsatisfied, execution may be issued against members to the extent of their unpaid subscriptions, provided "that no such execution shall issue against any member except upon an order of court or of a judge of the court in which action" has been instituted, "and the said court or judge may compel the production of the books of the association," and "ascertain the truth in regard thereto, and may order the execution to issue accordingly," does not violate Const. U. S. Amend. 14, and Const. Mich. art. 6, § 32, providing that no person shall be deprived of property without "due process of law."—ROUSE, HAZARD & CO. v. DONOVAN, Mich., 62 N. W. Rep. 356.

42. CONSTITUTIONAL LAW—Right to Contract.—House bill No. 203, dated February 20, 1895, and entitled "A bill for an act to regulate the weighing of coal at mines," etc., in so far as it attempts to deprive persons of the right to fix by contract the manner of ascertaining compensation for mining coal, is in violation of Const. U. S. Amend. 14, and of article 2, § 25, of the Colorado bill of rights, which provides that "no person shall be deprived of life, liberty, or property, without due process of law."—IN RE HOUSE BILL NO. 203, Colo., 39 Pac. Rep. 431.

43. CONSTITUTIONAL LAW — Special Acts — Judicial Notice.—Where a bill, by its terms, is made applicable to all towns and cities contiguous to any city of 100,000 or more inhabitants, the courts will take judicial notice of the fact that there is only one city in the State with such a population, and there is no probability that any other city will come within its terms for many years.—IN RE CONSTITUTIONALITY OF SENATE BILL NO. 293, Colo., 39 Pac. Rep. 522.

44. CONTRACT—Breach.—One who contracts to furnish feed for a certain number of cattle for a certain period is not liable for refusing to furnish it when the other party fails to provide the cattle, but wishes the feed for other purposes.—MOORE v. PARIS OIL & COTTON CO., Tex., 29 S. W. Rep. 821.

45. CONTRACTS — General Custom in Business. — A custom in regard to a certain business existing among all the persons engaged therein in a city is a general custom, with reference to which it will be presumed, in the absence of rebutting evidence, that contracts touching the business were entered into.—BURBRIDGE v. GUMBEL, Miss., 16 South. Rep. 792.

46. CONTRACT—Infancy—Ratification.—A ratification after majority of a contract made during infancy may be qualified, and upon conditions. In an action on such a contract, such a conditional ratification will not avoid the defense of infancy, unless there is proof of the happening of the conditions annexed thereto.—STATE v. BINDER, N. J., 31 Atl. Rep. 215.

47. CONTRACT—Rescission—Delay. — Rescission of a contract for purchase of lots of uncertain value, dependent on a speculative enterprise, asked because of false representations, will not be granted where suit is not brought till three and a half years after making the contract, and two years after the falsity of the representations must have been known, and the delay is unexplained.—SAGADAHOC LAND CO. v. EWING, U. S. C. C. of App., 65 Fed. Rep. 702.

48. CONTRACT OF HIRING—Salary. —A contract by a salesman to sell $40,000 of goods in a year for a compensation of $800, with a commission on all goods sold over that amount, and a deduction for sales of a less amount, there being no time stated for payment of the compensation, will be construed to mean that the compensation is payable when the $40,000 worth of goods are sold.—REYNOLDS v. REEDER, Mich., 62 N. W. Rep. 355.

49. CORPORATIONS—Confession of Judgment.—An insolvent corporation may confess judgment in favor of *bona fide* creditors who are not directors or officers, even though this results in the appropriation of all the corporate assets to the payment of such creditors; but such a confession in favor of a creditor whose claim is based on an assignment for some of the corporate officers is void.—GOTTLIEB v. MILLER, Ill., 39 N. E. Rep. 992.

50. CORPORATIONS — Consolidation.—Under the laws of Alabama, in the absence of express statutory authority, there can be no consolidation of the stock of one corporation with that of another, so as to create a consolidated company composed of the stockholders of both corporations; and to attempt such a scheme, over the objection or anticipated objection of a minority of the stockholders in either corporation, is illegal, and contrary to public policy.—TOMPKINS v. COMPTON, Ga., 21 S. E. E. Rep. 79.

51. CORPORATION—Contract made by Officer.—Where a contract, though made in the individual name of the president of a corporation, is made for its use and benefit, and is so understood by its officers, and it, with full knowledge of the terms of the contract, assumes the payment stipulated therein, and alone profits thereby, it will be liable for the contract price.—COTTING v. GRANT ST. ELECTRIC RY. CO., U. S. C. C. (Wash.), 65 Fed. Rep. 545.

52. CORPORATION—Foreign Corporation—Service of Process. — Any service which would be sufficient as against a domestic corporation may be authorized by the statute of a State to commence an action against a foreign or non-resident corporation. It may, accordingly, be made upon the president of a foreign corporation during the time he may be temporarily abiding within the jurisdiction of the court when the suit is brought.—GRAVELY v. SOUTHERN ICE-MACH. CO., La., 16 South. Rep. 867.

53. CORPORATIONS—Illegal Issue of Stock.—A subscriber to stock issued *ultra vires* cannot be required to pay assessments upon it, even at the suit of a receiver. — KAMPMANN v. TARVER, Tex., 29 S. W. Rep. 768.

54. CORPORATION—Officer —Estoppel.—A corporation which received and used the proceeds of a discount of notes by its president is estopped to deny his authority to discount the paper.—GERMAN NAT. BANK v. LOUISVILLE BUTCHERS HIDE & TALLOW CO., Ky., 29 S. W. Rep. 882.

55. COSTS ON APPEAL.— Where plaintiffs succeed in modifying the judgment appealed from, though only part of their grounds of appeal are sustained, they became the prevailing parties, and are entitled to costs.—SULLIVAN v. LATIMER, S. Car., 21 S. E. Rep. 3.

56. COUNTIES — Sheriffs — Employment of Jailer.—Where the county refuses to pay the salary of the necessary persons employed by the sheriff to guard his prisoners, the sheriff may pay them, and recover the amount from the county as money paid for the

benefit of the county.—LLOYD v. BOARD OF COM'RS OF SILVER BOW COUNTY, Mont., 39 Pac. Rep. 457.

57. COUNTY ATTORNEY—Eligibility.—An attorney at law, who is suspended from the practice of law in the District Court of a county in which he has been elected county attorney, is not eligible to enter upon the performance of the duties of such office so long as the order of suspension remains in full force, and not reversed.—BROWN v. WOODS, Okla., 39 Pac. Rep. 473.

58. COUNTY BONDS.—A petition to enjoin county authorities from issuing bonds alleged to be be illegal, which fails to show by clear averment the illegality of the bonds proposed to be issued, is demurrable.—BUIE v. CUNNINGHAM, Tex., 29 S. W. Rep. 801.

59. COURTS—Jurisdiction. — Where, in an action to recover both actual and exemplary damages for tort, the total amount claimed is sufficient to give the court jurisdiction, it does not lose jurisdiction by reason of the subsequent death of plaintiffs, and the dismissal of the claim for exemplary damages, thereby reducing the amount claimed below the amount necessary originally to give jurisdiction.—DWYER v. BASSETT, Tex., 29 S. W. Rep. 815.

60. COURTS — Jurisdiction of State Courts.—Where, pending a controversy in the land office between parties as to their right to public lands, the party who has been in peaceful possession of the land is forcibly ejected by the other, the State courts have jurisdiction of an action to restore the possession to the ejected party.—FULMELE v. CAMP, Colo., 39 Pac. Rep. 407.

61. CRIMINAL EVIDENCE—Confession—Locating Stolen Goods.—A constable may testify that, after he told defendant that if he knew anything about the stolen goods, it would be best for him to tell, defendant showed him where the goods were hidden.—STATE v. WINSTON, N. Car., 21 S. E. Rep. 37.

62. CRIMINAL LAW — Arrest of Judgment—Record on Appeal.—Where an information contains all the essential elements of an offense, a motion to arrest judgment cannot be sustained, although there are defects or uncertainties which might be fatal on a motion to quash.—CAMPTON v. STATE, Ind., 39 N. E. Rep. 916.

63. CRIMINAL LAW—Assault.—A judgment for plaintiff in an action for assault will not be set aside where there is evidence that defendant threw plaintiff down and ravished her, she being a delicate girl of 15 years and in his employ, though she made no outcry at the time, nor complained for a long time afterwards.—DEAN v. RAPLEE, N. Y., 39 N. E. Rep. 952.

64. CRIMINAL LAW—Carrying Weapons.—Carrying a pistol with a broken main-spring, to a gunshop, for repairs, is not a violation of the statute making it unlawful to carry a pistol.—UNDERWOOD v. STATE, Tex., 29 S. W. Rep. 777.

65. CRIMINAL LAW—Character.—The character of accused since the charge cannot be considered in determining his innocence or guilt, but merely to discredit his testimony.—LEA v. STATE, Tenn., 29 S. W. Rep. 900.

66. CRIMINAL LAW — Embezzlement.—The fact that the treasurer of an association deposits a check drawn in its favor in a bank, and has the amount credited to his personal account, does not justify a conviction, in the absence of evidence of a demand by the association or of inability to respond to a demand.—PEOPLE v. ROYSE, Cal., 39 Pac. Rep. 524.

67. CRIMINAL LAW—Cumulative Sentences.—Where a defendant is found guilty under several separate indictments, a judgment sentencing him to imprisonment for a specific term of years under each indictment, the sentence in each case after the first to commence and be in force from and after the expiration of the sentence in the case preceding it authorizes his detention for the aggregate period of all the sentences.—IN RE WILSON, Utah, 39 Pac. Rep. 498.

68. CRIMINAL LAW—Extortion—Officers.—The incumbent of an office which an unconstitutional statute purported to create cannot be guilty of extortion, as he is neither a *de jure* nor *de facto* officer.—KITBY v. STATE, N. J., 31 Atl. Rep. 213.

69. CRIMINAL LAW—Homicide.—One must withdraw from a conflict which he wrongfully brings on, to justify the taking of his antagonist's life in self-defense.—DEAL v. STATE, Ind., 39 N. E. Rep. 930.

70. CRIMINAL LAW — Homicide—Manslaughter.—Deceased, with other persons, came to defendant's house, deceased having a gun, and acting in a violent manner. Deceased and two other persons returned to the house in the night-time, and threw bricks and beer kegs against the door, and broke in the window, and were abusive and violent, and only left when defendant's father whistled for the police. The father left to go to the police station, and, while he was away, deceased and his companions returned, and threw some things against the house. Defendant went out to follow his father, and see that no harm came to him, and on his way met deceased, and, after some words between them, he shot deceased: Held, that it was error to refuse to charge as to manslaughter.—LASRON v. STATE, Tex., 29 S. W. Rep. 782.

71. CRIMINAL LAW—Instructions.—Instructions need not be given in the language of the request, but are sufficient if given in substance.—STATE v. MILLS, N. Car., 21 S. E. Rep. 106.

72. CRIMINAL LAW—Instructions.—Where the jury is instructed that the State must prove defendant's guilt beyond a reasonable doubt, the failure to charge on the presumption of innocence, in the absence of a request, is not error.—STATE v. SMITH, Conn., 31 Atl. Rep. 207.

73. CRIMINAL LAW—Larceny—Statute.—Act March 11, 1886, making the stealing of horses, cows, etc., grand larceny, was not impliedly repealed by Sess. Laws 1886, ch. 11, § 8, providing that any person who shall steal, embezzle, or knowingly drive away, or deprive another of the immediate possession of, any neat cattle, horse, goat, etc., or who shall steal, embezzle, or apply to his own use any such animal, the owner of which is unknown, or who shall purchase it from any one not having the lawful right to it, shall be deemed guilty of a felony, as the latter act was intended to apply to such acts only as were not theretofore larceny.—IN RE GANNETT, Utah, 39 Pac. Rep. 496.

74. CRIMINAL LAW — Theft. — On trial for theft of a pledged horse, a charge that if, at the time defendant took the horse, he believed he had a right to do so, or if he took it with no intent to appropriate it to his own use, but to use temporarily, or if the jury had a reasonable doubt of either of these proportions, defendant should be acquitted, sufficiently presents the defense that it was a trespass only.—SMITH v. STATE, Tex., 29 S. W. Rep. 785.

75. CRIMINAL LAW—Threats.—A threat to arrest a person in a civil proceeding is not a threat to injure her "person" (Pub. St. ch. 202, § 29), so as to render the party making the threat liable to prosecution.—COMMONWEALTH v. MOSBY, Mass., 39 N. E. Rep. 1030.

76. CRIMINAL LAW — Verdict — Separate Counts.—Where an indictment contains two counts, and the jury returns a verdict of guilty, the conviction will not be reversed because the court inserted in the verdict, after the word "guilty," the crime charged is one of the counts.—SOUTHERN v. STATE, Tex., 29 S. W. Rep. 780.

77. CRIMINAL PRACTICE — Bribery — Indictment.—An indictment for bribery, alleging that defendant "did unlawfully bribe C to vote in an election by paying said C one dollar, which he received, and voted as requested by said Steele in consideration of said dollar," is insufficient, as it does not state that the party receiving the bribe was influenced thereby to vote in any particular way.—COMMONWEALTH v. STEELE, Ky., 29 S. W. Rep. 855.

78. CRIMINAL PRACTICE — Charging Two Offenses.—Under a statute against keeping a disorderly house, or knowingly permitting it to be kept, where such ways

of committing the offense are included in the same general definition, and made punishable in the same manner, they do not constitute distinct offenses, and may be charged conjunctively in one count in the indictment.—WILLIS V. STATE, Tex., 29 S. W. Rep. 787.

79. CRIMINAL PRACTICE—Indictment—Certainty.—An indictment which is so indefinite as to fail to inform accused of the nature of the offense sought to be charged is fatally defective.—STATE V. MCGINNIS, Mo., 29 S. W. Rep. 842.

80. DEED—Acknowledgment—Impeachment.—Where a husband and wife, without fraud or duress, sign a mortgage on the homestead, in the presence of a notary public, the officer's certificate of acknowledgment in proper form cannot be impeached by parol evidence.—AMERICAN FREEHOLD LAND MORTGAGE CO. V. JAMES, Ala., 16 South. Rep. 887.

81. DEED — Condition — Payment of Annuity.—The condition subsequent, as expressed in a deed conveying an estate in fee simple, being the payment of a certain annuity by the grantee to the grantor on a given day in each year during the life of a grantor, the condition was not broken so long as the annuity was not in arrears; and until the condition was broken the grantor had no right to re enter as for a forfeiture, and no cause of action to cancel the deed as a cloud upon his title.—DENHAM V. WALKER, Ga., 21 S. E. Rep. 102.

82. DEED—Condition Subsequent.—A deed which reserves to the grantor the right to live on the land until his death, and provides that his minor children shall be supported out of the proceeds thereof until each shall have received a certain sum, and that the grantee shall pay for each of the minor children a certain sum on certain dates; and that, when the grantee shall have performed the conditions expressed, the legal title to the land shall vest in him absolutely, creates a condition subsequent.—BANK OF SUISUN V. STARK, Cal., 39 Pac. Rep. 531.

83. DEED—Consideration—Parol Evidence.—Plaintiff purchased timber land from defendant by warranty deed, cut the timber, and sold it to a lumber company. A person claiming title to the land sued the lumber company for the conversion of the timber, and recovered. Plaintiff paid the lumber company the amount paid by it on the judgments, and sued defendant for the value of the timber: Held, that parol evidence was admissible to show what part of the consideration of the deed was paid for the timber.—FITZPATRICK V. HOFFMAN, Mich., 62 N. W. Rep. 349.

84. DEED — Description — Identity of Premises. — Where the east and west lines of a part of a lot as described in a certain deed correspond with each other within a fraction of a foot, and with the known and fixed boundaries called for by all prior deeds, the identity of the premises is not affected by the fact that the north and south lines are inconsistent, and one must, and both may, be wrong.—BLUMENTHAL REAL-ESTATE & INV. CO. V. BROCH, MO., 29 S. W. Rep. 836.

85. DEED—Easement in Driveway.—A deed describing the land as extending "to a driveway, thence easterly on said driveway" a certain distance, and reserving all existing rights of way over the driveway, conveys title in fee to its center, subject to such easements, and with a corresponding easement over the other half.—BOLAND V. ST. JOHN'S SCHOOLS, Mass., 39 N. E. Rep. 1035.

86. DEED—Parol Evidence.— Where a deed authorized defendant to take so much of the land as was sufficient for its roadway, ditches, etc., evidence of a parol agreement that the defendant should pay for any excess over 20 feet, in addition to the consideration expressed in the deed, is admissible.—JOHNSON V. EAST CAROLINA LAND & RAILWAY CO., N. Car., 21 S. E. Rep. 28.

87. DEED OF INFANT—Ratification.—Where an infant conveys land, and, upon coming of age, takes up the old deed, and reconveys by another, in affirmance of it, the original deed is thereby rendered valid *ab initio*. —COX V. MCGOWAN, N. Car., 21 S. E. Rep. 108.

88. EASEMENTS—Creation.—Where a landowner conveys part of it, and afterwards lays out an alley bounding partly on the land conveyed and on that retained by the grantor, the grantee and those claiming under him are entitled to the use of such alley as against a subsequent grantee of the balance of the land by deeds which recite that he is entitled to "the free use and privilege of said alley in common with" the first grantee, "his heirs and assigns, owners, tenants, occupiers of the other lots of ground bounding thereon." —EHRET V. GUNN, Penn., 31 Atl. Rep. 200.

89. EJECTION—Registration.—In an action to have names stricken from the registry of voters, the entries in the registry are admissible to show that the register acted properly in placing the names thereon, and will be deemed to be true till their falsity is established.—LANGHAMMER V. MUNTER, Md., 31 Atl. Rep. 300.

90. ELECTION OF REMEDIES.—*Assumpsit* for the surplus which should have arisen on the proper sale of mortgaged chattels is a bar to an action for the conversion of the chattels, though the action in *assumpsit* was dismissed from failure to file security for costs.—THOMAS V. WATT, Mich., 62 N. W. Rep. 345.

92. EMINENT DOMAIN—Water Supply. — Where land was taken and paid for by a city for the protection of its water supply, exclusive possession of the service was one of the rights acquired. — CITY OF NEWTON V. PERRY, Mass., 39 E. E. Rep. 1032.

93. EQUITY—Election of Directors of Corporation.—A court of equity has no jurisdiction, in a direct proceeding for that purpose, to determine whether the election of the directors of a private corporation has been legally held, and whether certain persons, claiming to be and acting as such, are such.—KEAN V. UNION WATER CO., N. J., 31 Atl. Rep. 282.

94. EQUITY—Power to Restrain Criminal Proceedings. —The jurisdiction of a court of equity to restrain proceedings at law extends to criminal as well as civil proceedings where such criminal proceedings are instituted by plaintiffs who have previously sought the aid of the court of equity to maintain their rights as against the parties against whom the criminal proceedings are instituted, the subject-matter of both proceedings being the same.—WADLEY V. BLANT, U. S. C. C. (Va.,), 65 Fed. Rep. 667.

95. ESTOPPEL— Acquiescence.—A creditor of a mining company, who makes no objection to a transfer of its property to another company, and knowingly permits the transferee to work the property, and incur debts, for the satisfaction of which the property is subsequently sold, is estopped to deny the validity of the original transfer or of the title acquired at the sale.—VAUGHN V. COMET CONSOL. MIN. CO., Colo., 39 Pac. Rep. 422.

96. ESTOPPEL—Approval of Appeal Bond.—The approval of an appeal bond by the court as required by Rev. St. 1894, § 650 (Rev. St. 1881, § 638), may be waived, and, where it has been expressly waived by the appellee, the appellant who has had the full benefit thereof, will not be permitted to set up in defense of an action on the bond that it has not been approved.—SMALL V. KENNEDY, Ind., 39 N. E. Rep. 901.

97. ESTOPPEL OF MARRIED WOMAN—Improvements. —A married woman holding an equitable title to real estate, the legal title to which is in her husband, who knowingly allows the latter to contract for improvements with a third party, who in good faith relies upon the husband's ownership as shown of record, is estopped to set up her equitable interest as against the creditor.—LE COIL V. ARMSTRONG LANDON HUNT CO., Ind., 39 N. E. Rep. 922.

98. EVIDENCE — Contract.—Where no fraud was used by defendant in obtaining from plaintiff a writing authorizing him to sell property at a certain price, and plaintiff knew the terms of the writing, evidence as to the value of the property, and of defendant's state-

ments in regard thereto, made previous to the execution of the writing, is not admissible to show a right of recovery by plaintiff.—POLLARD v. MCCLOSKEY, Colo., 39 Pac. Rep. 432.

99. EVIDENCE — Proof of Agency.—Agency cannot be proven by the declarations of one claiming to act as agent.—BRADY v. NAGLE, Tex., 29 S. W. Rep. 943.

100. EVIDENCE—Rebuttal Testimony.—On an issue as to whether timber was properly sawed by plaintiffs for defendant, where a witness for the latter testified that it was not proper to saw different kinds of timber without readjusting the saw, a witness for plaintiffs could properly testify that it was proper to do so.—REYNOLDS v. SWEET, Mich., 62 N. W. Rep. 356.

101. EXECUTION — Exemptions—Residence.—Defendant, the head of a family, came from New York to Colorado, intending to live there permanently, and to remove his family there when able. When he left New York his family went to Pennsylvania, and were never in Colorado: Held, that defendant was not "residing with" his family in Colorado, so as to exempt stock in trade in his possession, under Mill's Ann. St. § 2562.—SCHWARTZ v. BIRNBAUM, Colo., 39 Pac. Rep. 416.

102. EXECUTION — Real Estate.—As, under the laws of Washington, a levy of execution on real estate gives no right of possession, where an officer levies on and takes possession of all the property of a street railway, its real estate as well as the personal property used in connection therewith, the levy will be considered an entirety and wholly wrong; and the operation of the road being stopped, and the franchise therefore being in danger of forfeiture, and the company being insolvent, all the property will be taken from the officer's possession.—FRONT ST. CABLE RY. CO. v. DRAKE, U. S. C. C. (Wash.), 65 Fed. Rep. 539.

103. EXECUTION SALE OF MORTGAGED LANDS.—The holder of an unforeclosed mortgage on property brought to sale under a general judgment junior to the mortgage could not, without the consent of the mortgagor and the plaintiff in execution, cause the entire estate to be sold, and afterwards claim the fund in the sheriff's hands.—J. G. HYNDS MANUF'G CO. v. OGLESBY & MEADOR GROCERY CO., Ga., 21 S. E. Rep. 63.

104. FALSE REPRESENTATIONS — Failure to Make Examinations.—In an action for false representations in inducing plaintiff to purchase land in the belief that the privilege of selling coal for a railroad company, which was also transferred to plaintiff, would exist for a definite length of time, where it appears that defendant acted in good faith, and that plaintiff, by making inquiry, could have found out that the privilege was to exist only during the pleasure of the company, he cannot recover.—SHORT v. PIERCE, Utah, 39 Pac. Rep. 475.

105. FALSE REPRESENTATIONS — Reliance Thereon.—To make false representations legally available, they must not only have been believed, but they must have been acted upon, and formed, at least in part, the inducement for the action resulting in damage.—SIOUX BANKING CO. v. KENDALL, S. Dak., 62 N. W. Rep. 377.

106. FEDERAL COURTS — Jurisdiction.—The provision of the acts of March 3, 1887, and August 13, 1888, that no civil suit shall be brought against any person in any other district than that whereof he is an inhabitant, applies to suits to restrain the infringement of patents brought against parties who are not aliens or corporations organized outside the United States.—UNION SWITCH & SIGNAL CO. v. HALL SIGNAL CO., U. S. C. C. (N. Y.), 65 Fed. Rep. 625.

107. FEDERAL COURTS — Jurisdiction.—It seems that where a Circuit or District Court refuses to hear a cause for want of jurisdiction, and the question thus decided may be heard, on certificate, in the Supreme Court, under section 5 of the act establishing the Circuit Courts of Appeal, it would not be within the power of the Circuit Court of Appeals by *mandamus* to compel such Circuit or District Court to take jurisdiction of the cause, but such power is vested in the Supreme Court whenever remedy by appeal or writ of error or certificate is not adequate.—UNITED STATES v. SWAN, U. S. C. C. of App., 65 Fed. Rep. 647.

108. FEDERAL COURTS — Jurisdiction—Territories.—The claim that a territory is without authority, under its organic act, to extend its taxing power to a railroad through an Indian reservation created by congress, presents a question within the appellate jurisdiction of the Supreme Court under 23 Stat. 443, giving an appeal to it from the Supreme Court of a territory, where there is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States.—MARICOPA & P. R. CO. v. TERRITORY OF ARIZONA, U. S. S. C., 15 S. C. Rep. 391.

109. FEDERAL COURTS — Jurisdictional Amount.—Where an evicted grantee sues the grantor in Nebraska for $6,000 damages, the amount in controversy, exclusive of interest and costs, exceeds $2,000, though the price paid by plaintiff for the land was only $1,200; and the law of such State, in case of eviction imposes a responsibility only for the return of the price, with interest thereon.—BROWN v. WEBSTER, U. S. S. C., 15 S. C. Rep. 377.

110. FEDERAL COURTS—Mandamus—Mode of Review.—An application for a writ of *mandamus*, being a proceeding at law, can be reviewed in the Circuit Court of Appeals only by writ of error, not by appeal.—MUHLENBERG COUNTY v. DYER, U. S. C. C. of App., 65 Fed. Rep. 634.

111. FEDERAL COURTS—Supreme Court—Appeal from Circuit Court.—Where, in an action in the Circuit Court in which the only question involved is one of jurisdiction, the judgment not only recites that, for reasons filed as part of the order, the court considers it has no jurisdiction, and dismisses it for want of jurisdiction, but the judge certifies, in the bill of exceptions, that it was "held that the court did not have jurisdiction of the suit, and ordered the same to be dismissed," and, in the order allowing a writ of error, certifies that it is allowed on "the question of jurisdiction," there is a sufficient compliance with Judiciary Act March 3, 1891, § 5, which provides that in any case in which the jurisdiction of the Circuit Court is in issue the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.—IN RE LEHIGH MIN. & MANUF'G CO., U. S. S. C., 15 S. C. Rep. 375.

112. FEDERAL OFFENSE—National Banks—Misapplication of Funds.—Rev. St. § 5209, relating to national banks provided that officers or agents thereof who willfully misapply any of its moneys, or who make any false entry or reports, with intent to injure or defraud it, or to deceive any officer of a bank, or any agent appointed to examine its affairs, and "every person" who, with like intent, aids or abets any officer or agent in any violation of the section, shall be guilty, etc.: Held, that persons not officers or agents of a national bank may be aiders and abettors of the president of the bank in the violation of such statute.—COFFIN v. UNITED STATES, U. S. S. C., 15 S. C. Rep. 394.

113. GARNISHMENT—Assignment of Fund.—In order to defeat a garnishment on the ground that the debtor had made an equitable assignment of the fund before the garnishment was served, facts or circumstances must appear from which it could rightly be inferred by a jury both that a complete equity had arisen between the assignor and the assignee which would support an assignment, and that these two parties contemplated an immediate change of ownership with respect to the particular fund in question.—JONES v. GLOVER, Ga., 21 S. E. Rep. 50.

114. GARNISHMENT—Mortgage — Collateral.—A mortgage debt cannot be garnished by proceedings against one who holds the mortgage as collateral security.—TAYLOR v. HUEY, Penn., 31 Atl. Rep. 199.

115. GARNISHMENT Stock Certificates.—Certificats of stock in a foreign corporation are personal property, and, when in the hands of third parties within this State, are subject to garnishment proceedings, under

Gen. St. 1878, ch. 63, § 167 (Gen. St. 1394, § 5809).—PUGET SOUND NAT. BANK OF EVERETT V. MATHER, Minn., 62 N. W. Rep. 396.

116. HABEAS CORPUS—Federal Courts—State Court.—Repugnancy of a State statute to the constitution of the State does not authorize a writ of habeas corpus from a United States Court, unless petitioner is in custody by virtue of the statute, and it also conflicts with the constitution of the United States.—ANDREWS V. SWARTZ, U. S. S. C., 15 S. C. Rep. 389.

117. HABEAS CORPUS—Imprisonment for Debt.—It is not imprisonment for debt when the court orders payment of an amount acknowledged to be in possession of the defendant, and under the control of the court, and, on failure to do so, commits the defendant for contempt of its authority.—STATE V. MAUBERRET, La., 16 South. Rep. 814.

118. HIGHWAY — Obstruction — Railroad Company.—The fact that a railroad company authorized to construct its road across a highway is required to securely fence its road does not justify it in building a fence across the highway.—BLUE V. BRIGGS, Ind., 39 N. E. Rep. 885.

119. HOMESTEAD—Intent of Owners.—Mere intention of a man and wife to occupy as their home certain land purchased by the husband, without any preparation to put such intent into effect, is not sufficient to constitute the land a homestead.—BENTE V. LANGE, Tex., 29 S. W. Rep. 313.

HUSBAND AND WIFE—Concealment of Loan.—No inquiry being made of her, it was no fraud by a wife, who had loaned money to her husband for use in his business, not to disclose to the public, or to persons who subsequently credited him on the faith of the money, the fact that she had made the loan, or that she was his creditor by reason thereof.—ROBINSON V. STEVENS, Ga., 21 S. E. Rep. 96.

121. HUSBAND AND WIFE—Curtesy.—Act Jan. 12, 1865, providing that the property of a married woman listed in the register of deeds of the county in which she resides shall be exempt from all debts and liabilities of her husband, does not deprive a husband of curtesy in the property listed.—ALLEN V. ROUSH, Mont., 39 Pac. Rep. 459.

122. HUSBAND AND WIFE—Husband's Note—Equitable Defenses.—The fact that a wife is empowered by statute to trade as *feme sole* does not render a note executed to her by her husband her separate property absolutely, so as to absolve her from asserting equitable grounds for relief in an action on the note—the rights of husband and wife as between themselves not being affected by said statute.—LEAHY V. LEAHY, Ky., 29 S. W. Rep. 852.

123. INJUNCTION—Bond—Damages—Attorney's Fee.—An attorney's fee will not be allowed as damages in an action on an injunction bond.—CANADIAN & A. MORTGAGE & TRUST CO. V. FITZPATRICK, Miss., 16 South. Rep. 877.

124. INJUNCTION—Erection of Public Building—Certiorari.—Injunction will not lie at the suit of a taxpayer to restrain city authorities from erecting a public building, on the ground that the city had no authority to purchase the site, the remedy being by *certiorari*.—JACKSON V. MAYOR, ETC., OF CITY OF NEWARK, N. J., 31 Atl. Rep. 233.

125. INJUNCTION—Foreclosure of Chattel Mortgage.—In case a chattel mortgagee files his bill in the court of equity to foreclose his mortgage, and an attaching creditor of a person not the mortgagor seizes upon the same goods and chattels, and by an auditor offers them for sale, the court will, upon application by the complainant mortgagee, not only restrain the attaching creditor from selling, but will also appoint a receiver with authority to make sale of said goods and chattels in order to avoid a multiplicity of suits, and to preserve the value of them until the rights of the parties can be determined.—WIEDEMANN V. SANN, N. J., 31 Atl. Rep. 211.

126. INJUNCTION—Obstructing a Water Course.—In a suit to enjoin the defendant from building a railroad embankment across a water course, a temporary injunction was issued, which was modified pending suit so as to allow the embankment to be built, provided the defendant constructed a certain ditch. After this, the complainant filed a supplemental bill, alleging that defendant had not constructed the ditch as ordered, and praying that the modifying order be enforced: Held, that complainant thereby waived its claim to an injunction restraining the construction of the embankment.—TOLEDO, ETC. R. CO. V. CHICAGO, ETC. RY. CO., Ill., 39 N. E. Rep. 809.

127. INJUNCTION—Waters.—Injunction will lie to prevent the widening of a ditch for a water course through plaintiff's land, and the erection of a dam which would destroy plaintiff's ford, defendant having no legal right to do either.—MENDENHALL V. HARRISBURGH WATER-POWER CO., Oreg., 39 Pac. Rep. 399.

128. INSOLVENCY — Corporation—Attachment.—Pub. St. ch. 136, provides that, if a corporation against which an attachment is issued does not within a certain time dissolve the same, insolvency proceedings may be maintained against it: Held, that where an attachment issued against a corporation is dissolved after the time specified, but before the institution of insolvency proceedings such proceedings cannot be maintained against the corporation.—MARBLE V. JAMESVILLE MANUF'G CO., Mass., 39 N. E. Rep. 998.

129. INSOLVENCY — Corporation—Fraudulent Transfer.—An assignment by a corporation of all its property for the benefit of such creditors as should become parties thereto is a fraudulent transfer, within Pub. St. ch. 157, § 136, providing that, if a corporation makes a fraudulent transfer, insolvency proceedings may be commenced against it.—STEEL EDGE STAMPING & RETINNING CO. V. MANCHESTER SAV. BANK, Mass., 39 N. E. Rep. 1021.

130. INSURANCE BROKER — Misrepresentations in Policy.—In an action on an insurance policy, it appeared that plaintiff applied to an insurance broker for insurance; that an application was made out by the broker on a blank bearing the imprint of an insurance company other than defendant; and that the broker did not represent that he was the agent of defendant. The application was presented by the broker to defendant's agents, with whom he had an arrangement whereby he was to receive a commission on all insurance brought to them. The policy was procured and delivered by the broker to plaintiff, and the premium received. The policy did not indicate that the broker was defendant's agent: Held, that the broker was the agent of plaintiff, and hence that misrepresentations in the application, due to an error of the broker, which were made warranties, avoided the policy.—SELLERS V. COMMERCIAL FIRE INS. CO., Ala., 16 South. Rep. 798.

131. INTERNATIONAL LAW — Officers of Foreign Governments.—Public agents, military or civil, of foreign governments, whether such governments be *de jure* or *de facto*, cannot be held responsible, in any court within the United States, for acts done within their own States, in the exercise of the sovereignty thereof, or pursuant to the directions of their governments; and this immunity extends to the agents of a revolutionary government, set up by a part of the citizens of a foreign country, which is ultimately established and recognized by the government of the United States.—UNDERHILL V. HERNANDEZ, U. S. C. C. of App., 65 Fed. Rep. 577.

132. INTERPLEADER — When Lies.—A broker, with whom money has been deposited as margins for sales of grain, and who thereupon makes contracts in his own name for the sale of grain to third persons, which contracts he is unable to fulfill because his principal enjoins him from paying over said money, cannot maintain a bill of interpleader to determine whether his principal or said third persons are entitled to said

money, since the latter's claim is against him personally, and not against the fund in his hands.—RYAN V. LAMSON, Ill., 39 N. E. Rep. 979.

133. JOINT TORT FEASORS—Several Liability.—Where defendant receives water power from a dam and race owned and controlled by plaintiff, under contract which charges him with the duty of keeping the flume leading from the race to his machinery in good repair, he is liable for any damage to plaintiff's race caused by a washout resulting from his neglect to keep the flume in repair, though the negligence of another person using water under a similar contract concurs in producing the washout.—SOUTH BEND MANUF'G CO. V. LIPHART, Ind., 39 N. E. Rep. 908.

134. JUDGMENT — Collateral Attack.—A judgment regularly given by a court which has jurisdiction of the persons and the subject-matter of the action, is binding upon all parties to the suit, and a petition to enjoin its enforcement is demurrable.—BOOS V. MORGAN, Ind., 39 N. E. Rep. 919.

135 JUDGMENT—Collateral Attack.—Where land sold on execution in favor of a firm is bought by the firm, and one partner quitclaims to the other, an action against the latter by the execution defendant to recover the land, on the ground that the judgment on which the execution was issued was void, because she was not served with citation, is a collateral attack on the judgment.—BROOKS V. POWELL, Tex., 29 S. W. Rep. 809.

136. JUDGMENT AGAINST PARTNERSHIP.—In an action brought against a partnership without naming the members, judgment rendered against "the defendants, and each of them," which directs that execution issue, will authorize a sale under execution of the individual property of a member whose name appears in the firm name.—STEPHENS V. TURNER, Tex., 29 S. W. Rep. 937.

137. JUDGMENT IN EJECTMENT—New Trial.—A judgment in ejectment will not be set aside in equity, on the ground of newly discovered evidence, where such evidence was known to the defeated party before the time had expired within which he was entitled to demand a new trial under the statute.—SNIDER V. RINEHART, Colo., 39 Pac. Rep. 408.

138. LIBEL—Evidence.—Where defamatory words of the same import as those sued upon are repeated upon several occasions prior to the time of publishing the defamatory words alleged in the complaint, they may be shown and are admissible in evidence on the trial to show malice, whether they are addressed to third persons or to the person defamed.—FREDERICKSON V. JOHNSON, Minn., 62 N. W. Rep. 388.

139. LICENSE—Estoppel.—The M. Ry. Co. permitted a waterworks company to construct a pipe line along the right of way to which the railway company had title in fee. With the full knowledge of the railway company, the waterworks company expended considerable sums in the construction of such pipe line, and continued, without interference, to use the same for a number of years in supplying a large city with water: Held, that the railway company would be estopped to revoke the license thus acted upon.—NATIONAL WATERWORKS CO. V. KANSAS CITY, U. S. C. C. (Mo.), 65 Fed. Rep. 691.

140. LICENSE—When Irrevocable.—B & H, owners of adjoining lots, agreed to erect a three story building on the lots, and made the upper story into one room, for lodge purposes. H agreed orally that, if B would deed him two feet extra of ground, he would put the stairway wholly in his building, for the use of tenants of upper stories, and thus enable B to accommodate the post office in his building: Held, that the license to B to use such stairway was restricted, and not irrevocable.—BALDWIN V. TAYLOR, Penn., 31 Atl. Rep. 250.

141. LIEN—Logging.—Laws 1893, ch. 132, § 2, giving a lien to every person laboring on or assisting in manufacturing timber into shingles, while the same remain at the mill, or in the control of the manufacturer, allows a lien on shingles made from shingle bolts on which the work for which the lien is claimed was performed, while the shingles are under the control of the manufacturer.—CAMPBELL V. STERLING MANUF'G CO., Wash., 39 Pac. Rep. 451.

142. LIFE ESTATE — Forfeiture.—A conveyance by a life tenant either of a nominal fee or of an estate for life, or the sufferance of disseisin by such life tenant, does not forfeit the particular estate to the remaindermen.—MCMICHAEL V. CRAIG, Ala., 16 South. Rep. 883.

143. LIFE ESTATE — Forfeiture—Tax Sale.—The purchaser of an estate in remainder at a sale on foreclosure of a mortgage upon the estate, made subject to the life estate on which the remainder is limited, cannot claim a forfeiture of the life estate from a sale of the lands at delinquent tax sale and a failure to redeem within the time prescribed by section 2852, Rev. St., where the omission occurred prior to the foreclosure, and there is nothing to show but that the forfeiture was waived by the mortgagor.—CHAFFEE V. FOSTER, Ohio, 39 N. E. Rep. 947.

144. LIFE INSURANCE—Authority of Agents.—The provision in the contract of agency between a life insurance company and a general agent that "agents crediting premiums not actually received do so at their own risk, and must look to the policy holder for reimbursement. The society does not ask or desire you to take this risk,"—is evidence that the company was aware of the practice of its agents to give credit, and, in connection with evidence of the agent's practice of giving credit on the first premium, shows a greater actual authority than is implied from the provision of the policy that it shall not take effect unless the premium is actually paid, so that a delivery by the agent of a policy without receiving payment would consitute a waiver of any such provision.—SMITH V. PROVIDENT SAV. LIFE ASSUR. SOC. OF NEW YORK, U. S. C. C. of App., 65 Fed. Rep. 765.

145. LIFE INSURANCE POLICY—Misrepresentations in Application.—Under St. 1887, ch. 214, § 21, providing that misrepresentation in the negotiation of insurance by the assured shall avoid the policy, unless made with intent to deceive, or unless it increased the risk, false answers to questions made on application for a policy which provided that false answers would render it void must also be shown to have been made with intent to deceive.—LEVIE V. METROPOLITAN LIFE INS. CO., Mass., 39 N. E. Rep. 792.

146. LIMITATIONS — Adverse Possession. — Where a person acquires possession of land set apart to the widow as dower under contracts with the remaindermen, and claims the land adversely to all the world, limitations begin to run against the right of the remainder men to recover the land from the date of their respective contracts, and the running of the statute is not postponed until the widow's death.—TUCKER V. PRICE, Ky., 29 S. W. Rep. 857.

147. LIMITATIONS — Demurrer.—The objection that a note is barred by limitations cannot be raised by demurrer unless the complaint shows that none of the exceptions exist which withhold the operation of the statute.—MCNEAR V. ROBERSON, Ind., 39 N. E. Rep. 896.

148. LIMITATIONS—Payment by Heirs of Mortgagor.—Where part of mortgaged land is sold, the grantee not assuming payment of any part of the mortgaged debt, a payment of interest by the heirs of the mortgagor, shortly before the debt would have been barred by limitations, and to extend the statute of limitations, made without the knowledge or assent of the grantee, does not arrest the statute of limitations as to the premises conveyed to the grantee. — MURDOCK V. WATERMAN, N. Y., 39 N. E. Rep. 829.

149. LIMITATION—Trespass by Mining Coal.—Where a landowner, by means of openings on his land and subterranean passageways, mines and removes the coal from the adjoining land, without the knowledge or means of knowledge by the owner of the latter, limitation of his right of action for compensation does not begin to run until he discovers the trespass, or until

discovery is reasonably possible.—LEWEY v. H. C. FRICK COKE CO., Penn., 31 Atl. Rep. 261.

150. MALICIOUS PROSECUTION—Complaint by a Third Person.—It is no defense to an action for malicious prosecution that the chief of police swore to the complaint, where he was induced to do so by defendant, and in doing so acted on defendant's information.—TANGNEY v. SULLIVAN, Mass., 39 N. E. Rep. 799.

151. MALICIOUS PROSECUTION OF CIVIL SUIT. — A plaintiff cannot maintain an action for the malicious prosecution of a civil suit until after the legal termination in his favor of the suit complained of.—DAVIS v. STUART, La., 16 South. Rep. 871.

152. MANDAMUS TO CITY RAILWAY COMPANY.—The ordinance of a borough required a city railway company to lay its road within the municipality in a certain manner, and the company duly accepted such ordinance under its corporate seal, and afterwards refused to comply with its provisions: Held, that a *peremptory mandamus* would be issued to compel it to perform the duty thus assumed.—STATE v. TRENTON PAS. SENGER RY. CO., N. J., 31 Atl. Rep. 238.

153. MANDAMUS TO COURT—Appeal.— *Mandamus* will not lie, pending an appeal from a decree awarding certain lands to plaintiff in partition, to compel the setting aside of a writ of possession issued under the court's order, and to restore petitioners to the possession of the lands; the remedy being by appeal if the court erred.—GUTIERREZ v. HEBBARD, Cal., 39 Pac. Rep. 530.

154. MARRIAGE—Validity.—The fact that the minister celebrating a marriage was not ordained as provided by statute does not render the marriage void, provided there was a valid common-law marriage.—HOLDER v. STATE, Tex., 29 S. W. Rep. 793.

155. MASTER AND SERVANT—Contributory Negligence. —The fact that one employed on a pile driver, to steady and place under the driving hammer the top of the suspended pile, puts his hand on the top of the pile directly under the hammer while it is resting on its guard, does not constitute contributory negligence.—MCPHEE v. SCULLY, Mass., 39 N. E. Rep. 1007.

156. MASTER AND SERVANT—Injury.—Where, in an action for injuries caused by the falling of a scaffold from the breaking of a ledger board, there is evidence that the wood provided by defendant for ledger boards was unsuitable, the question of whether defendant used due care in furnishing materials was for the jury, though there was evidence that the carpenters who built the scaffold were careless in selecting the piece of board which broke.—TWOMEY v. SWIFT, Mass., 39 N. E. Rep. 1018.

157. MASTER AND SERNANT—Negligence of Vice-Principal.—A carpenter in a railway company's repair shop, in placing new handles on a hand car, acts as the company's vice principal, as regards section hands using the car in going to and from their work, so as to impute his knowledge of defects in the wood used for the handles to the company, and thereby render the company liable for injuries to the section hands, caused by such defects.—INDIANA, I. & I. RY. CO. v. SNYDER, Ind., 39 N. E. Rep. 912.

158. MASTER AND SERVANT—Risks of Employment.—The work of whitewashing a card room, with the machinery in operation, is so obviously dangerous that an employee who undertakes the work takes the risk of being caught in the machinery. — CONNELLY v. HAMILTON WOOLEN CO., Mass., 39 N. E. Rep. 787.

159. MASTER AND SERVANT — Traveling Salesman. — One who agrees with wholesale merchants to give his whole time to the sale of their goods, and is to receive as compensation house and road commission on all approved sales, and pay his own expenses, is a traveling salesman.—MULHOLLAND v. WOOD, Penn., 31 Atl. Rep. 248.

160. MECHANICS' LIENS—Contract.— Where a house is built by contract, and it is necessary to refer to the specifications to ascertain what part of the labor is to be performed or what materials are to be furnished by the contractor, the specifications should be filed with the contract; but, if the contract provides that the contractor shall do all the work and furnish all the materials, it is not necessary to file the specifications.—FREEDMAN v. SANDKNOP, N. J., 31 Atl. Rep. 232.

161. MECHANIC'S LIEN — Service of Notice.—In proceeding by the original contractor to enforce a mechanic's lien against the owner of the land, no rights of subsequent purchaser intervening, the owner, by accepting service of a copy of the statement in lieu of the statutory service, before the time had elapsed within which the statutory service could have been made, is estopped to assert that the service was not made in the statutory manner.—MOUAT v. FISHER, Mich., 62 N. W. Rep. 338.

162. MECHANIC'S LIEN CLAIM.—A mechanic's lien is not invalidated by the fact that a door that was not furnished was included in the claim, where it was inserted through the mistaken judgment of the claimant as to his rights, another door than that which he contracted to furnish having been used.—PETERMAN v. MILWAUKEE BREWING CO., Wash., 39 Pac. Rep. 452.

163. MECHANIC'S LIEN CLAIM — Sufficiency.—A mechanic's lien claim, which states that the material was furnished to one person, and that the land was owned by another, and does not state that the material was furnished at the request of the owner, is fatally defective, though it alleges that the person to whom the material was furnished was in possession of the land under a contract of purchase with the owner.—CROSS v. TSCHARNIG, Oreg., 39 Pac. Rep. 540.

164. MINES AND MINING — Placer Patent.—A lode or vein, to come within Rev. St. U. S. § 2333, exempting it from the grant of a placer patent if its existence was known at the time of the application for such patent, must be of such extent as to render the land more valuable, and of such value as to justify exploitation and development.—BROWNFIELD v. BIER, Mont., 39 Pac. Rep. 461.

165. MORTGAGE — Death of Mortgagor.—The rights of a mortgagee, under a mortgage making special provisions for foreclosure and a receiver, are not affected by death of the mortgagor, but may be enforced against the executor.—GERMAN SAV. & LOAN SOC. v. CANNON, U. S. C. C. (Wash.), 65 Fed. Rep. 542.

166. MORTGAGE—Description.—The clause in a mortgage describing an indebtedness was as follows: "And to secure any notes that may be given for renewal of said notes, or any part thereof, or for any interest thereon, and any future advances or other indebtedness due, or that may hereafter become due," etc. The "said notes" were not described in the mortgage: Held, that the "said notes," and notes given in renewal thereof, were not secured by the mortgage, and that the words, "or other indebtedness due, or that may hereafter become due," meant indebtedness other than future advances, or indebtedness evidenced by promissory notes.—BOWEN v. RATCLIFF, Ind., 39 N. E. Rep. 860.

167. MORTGAGE — Foreclosure.—Where an action to redeem from a mortgage is brought by a wife whose husband has abjured the realm, the husband should be made a party so as to foreclose his interest.—SANBORN v. SANBORN, Mich., 62 N. W. Rep. 371.

168. MORTGAGE — Foreclosure.—Where one gives to the same person two mortgages, each covering a separate lot, and securing a different loan, and the lots have since been conveyed to different persons, who are made defendants, a bill to foreclose both mortgages in one suit is multifarious.—EASTERN BUILDING & LOAN ASS'N v. DENTON, U. S. C. C. of App., 65 Fed. Rep. 569.

169. MORTGAGES — Foreclosure—Evidence.—A judgment rendered in a foreign State on a note under seal is admissible in evidence, in an action, in North Carolina, commenced before such judgment was rendered, on the same note, and to foreclose a mortgage given

to secure it.—MORRIS v. BURGESS, N. Car., 21 S. E. Rep. 27.

170. MORTGAGE—Power of Sale.—A mortgage on land recited that, the mortgagor being indebted to mortgagee in the sum of $1,000, in two promissory notes of $500 each, and payable as described, the mortgage was given to secure "the payment of the same on the 1st day of October, 1882," and provided that, "if default be made in the payment of said amount, or any part thereof," the mortgagee was empowered to sell the land. One note was payable October 1, 1881, and the other October 1, 1882: Held, that the power of sale could not be exercised till after default in the payment of the note last due.—KEITH v. MCLAUGHLIN, Ala., 16 South. Rep. 886.

171. MORTGAGE ON CROPS.—A mortgage on the "entire crop grown by me the present year, which I may aid in or cause to be grown on my land or any other land that I may cultivate, or aid in or cause to be cultivated," covers the interest of the mortgagor in crops raised during such year on land rented by him.—COBB v. DANIEL, Ala., 16 South. Rep. 882.

172. MUNICIPAL BOUNDARIES.—The legislature of this State does not have the power to extend or enlarge the territorial limits of a specially chartered town or city by adding thereto non-contiguous lands,—that is, lands entirely separated from the municipality by intervening territory; and the courts may declare the annexation of such non-contiguous territory invalid, and enjoins the collection of municipal taxes upon the property thus sought to be annexed.—CITY OF DENVER v. COULEHAN, Colo., 39 Pac. Rep. 425.

173. MUNICIPAL CORPORATION — Contracts.—Where a city sells its gas plant, and the buyer contracts to light the city's streets for a certain sum, in consideration whereof the city agrees to pay any city taxes assessed on the gas plant, it does not constitute an exemption from taxation, but a consideration for the purchase of the plant, and the contract is enforceable.—BOARD OF COUNCILMEN OF CITY OF FRANKFORT v. CAPITAL GAS & ELECTRIC LIGHT CO., Ky., 29 S. W. Rep. 855.

174. MUNICIPAL CORPORATION—Contracts for Water. Where a city with a population of 5,000 and an assessed valuation of property of two and a quarter millions of dollars contracts with a person giving him the exclusive privilege of laying water mains in the city for 30 years, and providing that he shall furnish the city with 50 fire hydrants, for each of which it shall pay him a rent of $80 per year for the 30 years, with a stipulation that, at the end of 10 years, it may, at its option, buy the waterworks, at a price commensurate with the productive value thereof, the contract will not, after the city has enjoyed the benefit of it for over 10 years, be held so unreasonably oppressive or contrary to public policy as to be void.—FERGUS FALLS WATER CO. v. CITY OF FERGUS FALLS, U. S. C. C. (Minn.), 65 Fed. Rep. 586.

175. MUNICIPAL CORPORATION — Ice on Sidewalk.—Where a city allows ice, in a rounded and uneven condition, formed by accumulations of water artificially led from the tops of buildings, to remain across the sidewalk of a street much used for travel, it is liable to one injured thereby while properly using the walk. SCOVILLE v. SALT LAKE CITY, Utah, 39 Pac. Rep. 481.

176. MUNICIPAL CORPORATION — Incompetency of Foreman—Notice.—In an action against a city for injuries due to the incompetency of a street foreman, evidence of his general reputation for incompetency is admissible as tending to show notice to the city.—DRISCOLL v. CITY OF FALL RIVER, Mass., 39 N. E. Rep. 1003.

177. MUNICIPAL CORPORATIONS — Ordinance.—A city ordinance providing for a local improvement need not state that the proposed improvement is within the city limits, since the presumption is that the city council did not exceed its powers.—STANTON v. CITY OF CHICAGO, Ill., 39 N. E. Rep. 987.

178. MUNICIPAL CORPORATION—Public Improvements—Assessments.—A demand is not an indispensable prerequisite to the maintenance of an action by the contractor to collect the amount of a street-sprinkling assessment under Rev. St. 1894, § 3862, making such assessments payable in the same manner as street assessments, and section 3853, giving the contractor for a street improvement the right to foreclose the liens or unpaid assessments in any court of competent jurisdiction in case of the city's failure to collect them, but containing no provision for a demand before suit.—MYERS v. INDIANAPOLIS UNION RY. CO., Ind., 39 N. E. Rep. 907.

179. MUNICIPAL CORPORATION — Resolution of City Council.—Where a city ordinance authorizing gas companies to lay mains provides that, upon the existence of certain conditions, the city council may, by resolution, require a company to extend its mains, a company cannot, in an action against it to enforce a penalty for its failure to comply with such a resolution, question the decision of the council, as set out in the resolution, that the conditions precedent to the passage of such a resolution do in fact exist.—CITY OF INDIANAPOLIS v. CONSUMERS' GAS TRUST CO., Ind., 38 N. E. Rep. 943.

180. MUNICIPAL CORPORATION—Street Improvements—Protest.—Signature of one cotenant, written by another, in the former's presence and at his request, is sufficient for the purpose of such protest.—LOS ANGELES LIGHTING CO. v. CITY OF LOS ANGELES, Cal., 39 Pac. Rep. 535.

181. MUNICIPAL CORPORATION—Streets—Duty to Maintain Fence.—In an action against a city for injuries it appeared that there was a sidewalk along the traveled part of the street; that the lots were somewhat lower then the street; and that dirt from an excavation had been thrown into a lot, making a gradual descent for about 17 feet from the traveled part of the street into the lots, when there was a sudden decline. A fence which had been maintained along the street had been removed to allow the excavation to be made. While plaintiff was driving along the street, his horse became frightened, and, turning across the sidewalk, ran into the lots, and threw plaintiff out of his wagon: Held, that defendant was not liable for failure to maintain the fence.—SCANNAL v. CITY OF CAMBRIDGE, Mass., 39 N. E. Rep. 790.

182. NATIONAL BANKS—Borrowing Money—Power of Officers.—A national bank, whose vice-president borrows money in its name of another bank, and appropriates it to his own use, is not liable therefor, unless he was specially authorized to borrow the money, or his act was ratified.—CHEMICAL NAT. BANK OF NEW YORK v. ARMSTRONG, U. S. C. C. of App., 65 Fed. Rep. 573.

183. NATIONAL BANKS — Fraudulent Representations by Directors.—Directors of a national bank who, in the pretended performance of duties imposed upon them by law, use their official station to make false and fraudulent representations, which are believed and acted on by others, are liable to one defrauded thereby in a common-law action of deceit, and the right to maintain such action is not precluded by the liability imposed in the national banking law for violation of its provisions.—PRESCOTT v. HAUGHEY, U. S. C. C. (Ind.), 65 Fed. Rep. 653.

184. NEGLIGENCE—Imputed Negligence.—The negligence of the driver and owner of a private vehicle, who, by such negligence, contributes to causing a collision with a locomotive, is not imputable to another person riding by invitation in the vehicle, unless that person had some right or was under some duty to control or influence the driver's conduct. Such right might arise by reason of the two being engaged at the time in a joint enterprise for the common benefit; and, if this were not so, the duty might arise from know or obvious incompetency of the driver, resulting from drunkenness or other cause.—ROACH v. WESTERN & A. R. CO., Ga., 21 S. E. Rep. 67.

185. NEGLIGENCE—Injuring Plaintiff's Business.—The

intentional causing of loss by one man to another, without justifiable cause, and with a malicious purpose to inflict it, is of itself a wrong, and it is a general principle that every act of man which causes damage to another obliges him by whose fault it happened to repair it.—GRAHAM v. ST. CHARLES ST. R. CO., La., 16 South. Rep. 806.

186. NEGLIGENCE—Letting Vicious Horse.—A livery stable keeper, who knows of the viciousness of a horse he lets for hire, or who, by the exercise of reasonable care, ought to know of its viciousness, is liable for injuries resulting therefrom to the hirer.—LYNCH v. RICHARDSON, Mass., 39 N. E. Rep. 801.

187. NEGLIGENCE—Permanency of Injuries.—It is not competent for a party who, as a witness, testifies to his feelings, pains, and symptoms, to state his opinion that the injuries which caused the same are permanent. Nor is it, since the change in the law allowing parties to testify in their own behalf, competent for a plaintiff suing for physical injuries to prove by his wife that subsequently to their infliction he frequently complained to her of pains and hurts resulting therefrom, and stated that he suffered a great deal.—ATLANTA ST. R. CO. v. WALKER, Ga., 21 S. E. Rep. 48.

188. NEGOTIABLE INSTRUMENTS—Bona Fide Purchasers.—The indorsee of negotiable paper taken before maturity as collateral security for an antecedent indebtedness, in good faith, and without notice of defenses which might have been available between the original parties, holds the same free from such defense.—HAUGAN v. SUNWAD, Minn., 62 N. W. Rep. 388.

189. NEGOTIABLE INSTRUMENT — Note — Burden of Proof.—Where suit was brought by the holder of a promissory note payable to the order of a named person, and indorsed by the payee in blank, and the defendant, in his plea, admits the execution of the note and the ownership of it by the plaintiff, a *prima facie* case for the latter is made out. The burden of proof to establish his defense is upon the defendant, and consequently he is entitled to open and conclude.—MONTGOMERY v. HUNT, Ga., 21 S. E. Rep. 59.

190. NEGOTIABLE INSTRUMENT—Transferee of Mortgage Note.—Where a note was transferred before maturity, and the payee indorsed it, waiving protest and guarantying prompt payment, it will be presumed that the transfer was for a valuable consideration.—FIRST NAT. BANK OF GADSDEN v. SPROULL, Ala., 16 South. Rep. 879.

191. NUISANCE—Abatement.—The outflow of a private sewer on the land of another is not a nuisance, within the meaning of Pub. St. ch. 80, § 28, providing that lands in a city which are wet, rotton, spongy, or covered with stagnant water shall be deemed a nuisance, so as to authorize the board of health to abate the same by the construction of drains across the land.—HUSE v. AMESBURY BOARD OF HEALTH, Mass., 39 N. E. Rep. 1023.

192. OFFICERS — State Officers— Power to Employ Counsel.—Neither the governor nor any other State officer has authority to employ counsel to render services, the object of which is to influence legislation.—JULIAN v. STATE, Ind., 39 N. E. Rep. 923.

193. PARTITION—Who May Maintain. — The grantee in a deed of an undivided interest in lands, intended as a mortgage, cannot maintain partition.—MARX v. LA ROCQUE, Oreg., 39 Pac. Rep. 401.

194. PARTITION BY PAROL—Effect on Legal Trial.—In Ohio, parol partition, consummated by possession and acquiescence under it for less period than that which creates the bar of the statute of limitations, does not vest the legal title in severalty to the alotted shares; but such a partition; acquiesced in for any considerable length of time, will estop any person joining in it and accepting exclusive possession under it from asserting title or right to possession in violation of its terms.—BERRY v. SEAWALL, U. S. C. C. of App., 65 Fed. Rep. 742.

195. PARTNERSHIP — Dissolution. — A receiver appointed in an action by one partner against his copartners to dissolve the partnerships and wind up its affairs, does not so far represent creditors, or *bona fide* purchasers for value, that he can have a chattel mortgage on the firm property set aside because it was not filed.—WALSH v. ST. PAUL SCHOOL-FURNITURE CO., Minn., 62 N. W. Rep. 883.

196. PARTNERSHIP—Trust Deed.— Where a partnership has conveyed land in trust, with power of sale, to secure a firm debt, the death of a partner does not affect the power of the trustee to sell the land.—SCHWAB CLOTHING CO. v. CLAUNCH, Tex., 29 S. W. Rep. 922.

197. PARTNERSHIP—What Constitutes.—Where a person loans a merchant money, for which he is to receive, at a specified rate, interest, and in addition thereto, a certain per cent. of the net profits of the business, he becomes a partner at common law.—WESSELS v. WEISS, Penn., 31 Atl. Rep. 247.

198. PARTNERSHIP PROPERTY IN PARTNER'S NAME—Trust.—Where one partner purchases real estate with partnership funds, and takes the title in his own name, he will be deemed a trustee holding such title for the benefit of the partnership.—HARDIN v. JAMISON, Minn., 62 N. W. Rep. 894.

199. PLEADING—Demurrer.—A demurrer to one of the paragraphs of an answer upon the ground that it "does not state facts sufficient to make a good answer to the complaint" is defective, and presents no question for the determination of the court.—DAWSON v. EADS, Ind., 39 N. E. Rep. 919.

200. PRINCIPAL AND AGENT—Embezzlement by Agent.—Where the application for a loan states that applicant agrees to pay the person through whom the application is made a certain fee, as his attorney, for taking the application, making abstract of applicant's title to the land offered as security, and "securing and paying over the money," the applicant is liable for the amount of the loan in case the agent, on receiving it, embezzles it.—AMERICAN MORTG. CO. OF SCOTLAND v. KING, Ala., 16 South. Rep. 889.

201. PRINCIPAL AND AGENT—Following Trust Funds.—Defendant's intestate was for several years before his death the New York agent of plaintiffs, who were foreign merchants. On a settlement, 60 days before intestate's death, plaintiffs were indebted to him. Three days before his death he received two bills of exchange from plaintiffs, which he deposited in a certain bank, and a few days after his death, persons claiming to represent his estate received two other bills of exchange from plaintiffs, which were deposited in the same bank. The receipt of these bills, together with bills previously received, overpaid the indebtedness of plaintiffs: Held, that the deposit in the bank was affected with a trust in favor of plaintiffs, to the amount of such overpayment by them, as against other creditors of intestate.—ROCA v. BYRNE, N. Y., 39 N. E. Rep. 812.

202. PRINCIPAL AND AGENT—Insurance—Commissions. A factor who has insured his principal's goods at the latter's expense, and collected the insurance on their being damaged by fire while in his possession, is liable to his principal for the amount collected, with interest from the time payment is demanded of him, even though there was no contract between them as to insurance.—FISH v. SEEBERGER, Ill., 39 N. E. Rep. 982.

203. PRINCIPAL AND AGENT—Powers of Architect.—Whether an architect who furnishes designs and undertakes to superintend the construction of a building is also such an agent of the owner as to bind him personally for material furnished by a contractor who undertakes to construct the building, depends upon the contract between the owner and the architect; but, whether originally so authorized or not, if the architect assumes to act as such agent, and purchases material upon the credit of the owner, with his full

knowledge and assent, the latter thereby ratifies the assumed agency of the architect, and is bound for the price of the material thus purchased.—CROCKETT v. CHATTAHOOCHEE BRICK CO., Ga., 21 S. E. Rep. 42.

204. PRINCIPAL AND AGENT—Traveling Salesman.—A traveling salesman has no implied authority to collect money for his principal.—SIMON v. JOHNSON, Ala., 16 South. Rep. 884.

205. PRINCIPAL AND AGENT — Unauthorized Act of Agent.—Where a salesman, without authority, contracts on behalf of his principal to sell goods on commission for another house, and in answer to a letter from the principal asking about the terms, the person with whom the contract was made writes that he had given the salesman some designs to sell, and was to pay a percentage on the sales, and the principal then assents to the contract, the principal is not liable for the failure of the salesman to observe a stipulation of the contract, of which his principal had no knowledge, whereby he agreed, in consideration of the exclusive right to sell the goods, to diligently devote his time to their sale.—WILLISON v. MCKAIN, Ind., 39 N. E. Rep. 886.

206. PROHIBITION — Abatement. — Where *mandamus* proceedings by plaintiff are pending to compel the issuance of a certificate of election, he cannot bring prohibition to prevent the issuance of a certificate to another person, as it is a useless multiplication of remedies.—PAGE v. LETCHER, Utah, 39 Pac. Rep. 502.

207. PUBLIC LANDS—Withdrawal from Sale.—Withdrawal of public lands granted to railroad companies from sale, pre-emption, and homestead entries may be made by the interior department, either as executive acts or pursuant to command of congress, and need not be made by proclamation of the president.—WOOD v. BECH, U. S. S. C., 15 S. C. Rep. 410.

208. QUO WARRANTO—Title to Office.—By force of the statute of this State relating to informations in the nature of a *quo warranto*, it is the defendants' title that is alone put in issue.—STATE v. DAVIS, N. J., 31 Atl. Rep. 218.

209. RAILROAD AID BONDS—Constitutional Law.—Act 1892, ch. 295, authorizing county commissioners to issue bonds to pay the county's subscription to the capital stock of a railroad company, and providing that, before any of the money is paid over to the company, all *bona fide* claims held by residents of the county against the company shall be first paid, is unconstitutional where, before the passage of the act, the railroad, after having been completed, had become insolvent, and there had been in fact no subscription by the county, and it was merely an act to pay the individual claims of certain creditors of the company at the expense of the taxpayers of the county.—BALTIMORE & E. S. R. CO. v. SPRING, Md., 31 Atl. Rep. 208.

210. RAILROAD COMPANY — Accident at Crossing—Presumption.—Where a person is killed at a railroad crossing, and no negligence on the part of the railroad company is shown, it will not be presumed that deceased took the necessary precaution to avoid the accident.—LIVERMORE v. FITCHBURG R. CO., Mass., 39 N. E. Rep. 789.

211. RAILROAD COMPANY — Construction on Street—Damage.—A property owner may recover for depreciation in the value of his property by the construction and operation of a railroad near by, but not for the inconvenience and annoyance therefrom, which is suffered likewise by the public.—FT. WORTH & R. G. RY. CO. v. GARVIN, Tex., 29 S. W. Rep. 794.

212. RAILROAD COMPANIES — Fires.—In an action against a railroad company for fire escaping from its right of way, the complaint must aver that defendant permitted the fire to escape; and an allegation that its employees did so is insufficient, without an allegation that they were engaged in the line of their employment.—LOUISVILLE, N. A. & C. R. CO. v. PALMER, Ind., 39 N. E. Rep. 881.

213. RAILROAD COMPANY—Fire—Negligence.—It is not negligence *per se* to build a wooden building in close proximity to a railroad track.—BRIANT v. DETROIT, L. & N. R. CO., Mich., 62 N. W. Rep. 865.

214. RAILROAD COMPANY—Injuries.—Plaintiff, an active boy, eight years old, in disregard of the engineer's warning, jumped on a freight train moving up a sharp grade, eight miles an hour, and clung to the iron loop on the car, provided for that purpose, with one foot on the grease box of the truck: Held, that the fact that the trainmen saw him hanging there, and did not stop the train, did not render the company liable for injuries received by him in jumping off.—PITTSBURGH, C. C. & ST. L. R. CO. v. REDDING, Ind., 39 N. E. Rep. 921.

215. RAILROAD COMPANIES—Judgment in Condemnation Proceedings.—Where a landowner obtains judgment in condemnation proceedings against a railroad company for land appropriated by it for railroad purposes, its successor, which enters on, uses and occupies the land for the purposes for which it was condemned, is liable to such owner for the amount of such judgment.—CHICAGO & S. E. R. CO. v. GALEY, Ind., 39 N. E. Rep. 925.

216. RAILROAD COMPANIES—Killing Stock.—Plaintiff's horse, when killed by a train, was running at large in a field near the residence of the owner. The railroad track passed through the field, and round a curve. The place of killing was about 250 yards from the point in the curve at which the horse could have been seen by those in charge of the train, which was running at a speed of 40 miles an hour: Held, the railroad company was liable.—LOUISVILLE & N. R. CO. v. COCKRAN, Ala., 16 South Rep. 797.

217. RAILROAD COMPANIES—Killing Stock—Negligence.—The fact that the owner of oxen which are left standing in the road near a railroad track, and strayed away, abandoned pursuit of them at night, knowing that trains frequently passed, does not constitute contributory negligence.—LOUISVILLE & N. R. CO. v. WILLIAMS, Ala., 16 South. Rep. 795.

218. RAILROAD COMPANY — Lessor—Liability for Injuries.—A chartered railroad company permitting another company to run trains over its railway, and thus to use its franchise, is liable to a passenger upon one of such trains for a personal injury sustained by him by reason of a derailment resulting from negligence in failing to have and maintain a safe track.—CENTRAL RAILROAD & BANKING CO. OF GEORGIA v. PHINAZEE, Ga., 21 S. E. Rep. 66.

219. RAILROAD COMPANIES — Negligence. — Where defendant's cars ran into plaintiff's team, and defendant's employees saw plaintiff's danger in time to avert disaster, but failed to do so, the fact that the accident occurred on tracks used exclusively by the defendant, at a point not a public crossing, or that the employees assumed that plaintiff would use ordinary care, and not drive beside the tracks unless he was able to control his team, would not excuse the defendant, and it was liable in spite of prior contributory negligence of the plaintiff.—GULF, C. & S. F. RY. CO. v. LANKFORD, Tex., 29 S. W. Rep. 933.

220. RAILROAD COMPANY — Street Railways — Duty of Gripman.—The gripman of a cable street railway is not required to stop or check the car on seeing a pedestrian approaching the track, as he has the right to assume that the pedestrian will use reasonable precautions to avoid danger.—BUNYAN v. CITIZENS' ST. CO., Mo., 29 S. W. Rep. 842.

221. RAILROAD COMPANY — Switch to Private Warehouse.—A railroad company, as a carrier, is not bound, at common law, by the establishment and maintenance for any length of time of a switch connection of its main line with a private warehouse, forever to maintain it.—JONES v. NEWPORT NEWS & M. V. CO., U. S. C. C. of App., 65 Fed. Rep. 736.

222. REAL ESTATE AGENT — Commissions.—The fact

that, unknown to the principal, a member of a firm employed to sell land belongs to the syndicate to which the land is sold, bars the firm from recovering a commission for the sale, though the price received by the principal was fair, and all that he demanded.—HAMMOND v. BOOKWALTER, Ind., 39 N. E. Rep. 872.

223. RECEIVER — Collateral Attack.—The appointment of a receiver cannot be collaterally attacked on the ground that the judgment against the corporation on which execution was returned unsatisfied, and which was the ground for his appointment, was invalid.—JONES v. BLUN, N. Y., 39 N. E. Rep. 954.

224. RECEIVER — Complaint.—In an action by a receiver, a complaint alleging merely that plaintiff was, in a certain action, appointed receiver, and empowered to collect by suit all claims due his insolvent, is demurrable for failure to show authority from the court to sue.—HATFIELL v. CUMMINGS, Ind., 39 N. E. Rep. 859.

225. RELEASE AND DISCHARGE — Consideration.—Where an employee, in consideration of an agreement on the part of the employer to give him work as long as he is able to perform it, releases a claim for damages said to have been caused by the employer's negligence, the agreement is not void because lacking mutuality. By releasing his claim the employee has paid in advance for an optional contract, and he has the right to have it remain optional.—SMITH v. ST. PAUL & D. R. CO., Minn., 62 N. W. Rep. 392.

226. RELEASE OF ONE TORT FEASOR—Effect.—A city which pollutes the water of a natural stream by discharging drainage therein, to the injury of one through whose lands the stream flows, and an owner of gas works who also discharges noxious matter from the works into the stream, although not joint tort feasors, are jointly and severally liable in damages; and a release of such owner will not release the city from liability for damages, unless executed in full satisfaction of all the injury sustained by reason of the nuisance.—CITY OF VALPARAISO v. MOFFIT, Ind., 39 N. E. Rep. 909.

227. REMOVAL OF CAUSES — Error of Clerk of State Court.—Where a petition for the removal of a cause from a State to a United States court, showing on its face a good case for removal, is filed in due time in the State court, and is marked as filed by the clerk, the jurisdiction of the State court ceases *eo instanti;* and it is not material that the clerk of such court makes a wrong entry of the filing in the record, or otherwise wrongfully disposes of the petition.—WILLS v. BALTIMORE & O. R. CO., U. S. C. C. (Ohio), 65 Fed. Rep. 582.

228. RENT—Charge for Support of Land.—Testatrix devised two-thirds of her lands to her husband, and one-third to her children, all subject to her husband's tenancy by the curtesy, and the two thirds to the husband subject to the charge of providing a suitable support for two daughters and one son until the happening of specified events: Held, that the charge created was not a rent charge, and that the joinder of such daughters and son in a deed of one parcel of the land charged did not extinguish the charge as to the other parcels.—DODGE v. HOGAN, R. I., 31 Atl. Rep. 268.

229. SALE—Note — Interest.—Where, under the terms of an auction sale, the purchaser is to give an interest note for deferred payments, and the seller gives the purchaser a note to sign which does not bear interest, the seller will be deemed to have waived interest.—SWEENEY v. VAUGHAN, Tenn., 29 S. W. Rep. 903.

230. SALE — Separable Contract.—Where a contract for the delivery of 15 car loads of merchandise made by telegraphic communication between the parties is evidently intended to provide for shipments in car lots, to be paid for as received, the contract is separable.—WILLIAMS v. ROBB, Mich., 62 N. W. Rep. 352.

231. SALE — Warranty — Parol Evidence.—Where a contract for the purchase of a windmill contains express warranties on the part of the seller, parol evidence is, in the absence of fraud in its execution, inadmissible to show verbal warranties.—ZIMMERMAN MANUF G CO. v. DOLPH, Mich., 62 N. W. Rep. 339.

232. SALE OF CHATTELS — Conditional Contract.—One who buys and takes possession of personal property under a contract to pay the price in installments, with an agreement that the title shall remain in the seller until the price is paid, acquires no interest which is subject to levy and sale.—KECK v. STATE, Ind., 39 N. E. Rep. 899.

233. SALE OF GOODS — Rescission.—Plaintiffs bought goods from defendants by sample, and subsequently resold them: Held that, in an action to recover the price on the ground that the oats were worthless, plaintiff must allege that the goods delivered did not correspond with the sample; that the money received from the resales was returned, or, in case the resales were on time or credit, that the purchasers were released therefrom.—FEWELL v. DEANE, S. Car., 21 S. E. Rep. 1.

234. SALE OF LAND — Conditions.—Though a contract for the sale of land proivdes that the deed shall be given and consideration paid on the construction of a switch track to the land by a certain railroad company, the vendee, after accepting a deed under the contract, cannot refuse to pay the consideration on the ground that the switch track has not been built.—MCCLOY v. COX, Ind., 39 N. E. Rep. 901.

235. SCHOOL BOARD.—Injunction will not lie to restrain a school board from awarding a contract to one who was not the lowest bidder, where the board reserved the right to reject any and all bids, and there is on evidence of fraud on the part of the board, and no statute requiring contracts to be awarded to the lowest bidder.—CHANDLER v. BOARD OF EDUCATION OF CITY OF DETROIT, Mich., 62 N. W. Rep. 370.

236. SET-OFF AGAINST NOTE.—In an action on a note it appeared that defendant executed the note to L, who assigned it to plaintiff, but whether for value was not shown; and that a judgment against L and his surety was partly paid by the latter with money advanced by defendant, in consideration of which advance the surety assigned his interest in the judgment to defendant, who took it without knowledge of the transfer of the note: Held, that defendant could set off the judgment against the note to the extent of the surety's payment.—WOODS v. DALRYMPLE, Ind., 39 N. E. Rep. 883.

237. TAXATION — Assessment. — Under St. 1887, ch. 86, requiring the tax assessor to enter in separate columns the value of the real estate, specifying the value of buildings of the land separately, and Pub. St. ch. 11, § 45, requiring him to make "a fair cash valuation of all the estate, real and personal, subject to taxation," the aggregate valuation of the land and buildings must be equal to the full and fair cash value of the whole parcel as of the time when the valuation is made, considered with reference to all practicable uses to which the land, with the buildings, can be put.—TREMONT & SUFFOLK MILLS v. CITY OF LOWELL, Mass., 39 N. E. Rep. 1028.

238. TAXATION — Exemption — Manufacturers. — One who prints billheads, orders, and other forms for commercial purpose, on paper bought by him, and who cuts and folds the paper into shapes for such purposes, as well as to serve for ledgers and commercial books, is not a manufacturer of stationery, entitled to exemption from taxation.—PATTERSON v. CITY OF NEW ORLEANS, La., 16 South. Rep. 815.

239. TAXATION — Lien for Taxes Paid.—A person who pays taxes upon land prior to the time when he becomes an occupant thereof under the occupying claimant's law is not entitled to a lien therefor upon such land by reason of his subsequent *bona fide* occupation of the premises under color of title.—PFEFFERLE v. WIELAND, Minn., 62 N. W. Rep. 396.

240. TAX SALE—Purchase by State.—Where the State is the purchaser of land at tax sale, the controller and the attorney general have no authority to give notice

for the State of an intention to apply for a deed.—SAN FRANCISCO & F. LAND CO. v. BANBURY, Cal., 39 Pac. Rep. 439.

241. TELEGRAPH COMPANIES.—Where the sender of a telegraphic message tenders prepayment, and then withdraws the tender, and takes the money off with him, saying the message ought to be paid for by the sendee, the tender counts for nothing. — WESTERN UNION TEL. CO. v. POWER, Ga., 21 S. E. Rep. 51.

242. TELEGRAPH COMPANY—Prepayment of Charge.—A regulation of a company requiring the sender of a telegram to pay in advance charges for the delivery of the message in case the addressee lives beyond its free-delivery limits, irrespective of whether the sender knows the distance of the addressee's residence from the station, is unreasonable and invalid.—WESTERN UNION TEL. CO. v. MOORE, Ind., 39 N. E. Rep. 874.

243. TRIAL — Impeachment of Verdict.—Affidavits of jurors, under the provision of subdivision 2, § 4439, Rev. St., cannot be received for the purpose of impeaching their verdict unless it is a verdict obtained by a resort to the determination of chance.—GRIFFITHS v. MONTANDON, Idaho, 39 Pac. Rep. 548.

244. TRIAL—Right to Jury Trial.—Where a party is entitled to a jury trial, the court cannot order the testimony to be taken by a referee, on which the case may be afterwards tried by a jury.—WILSON v. TOWNSHIP OF YORK, S. Car., 21 S. E. Rep. 82.

245. TRUST—Constructive Trust.—Where an attorney, employed by plaintiff to buy certain land for him, purchased the land for himself, with his own money, by representing that the purchase was for plaintiff, upon tender to the attorney of the purchase money and compensation for his services, an enforceable trust resulted in plaintiff's favor.—HAIGHT v. PEARSON, Utah, 39 Pac. Rep. 479.

246. VENDOR AND PURCHASER—Right to Rescind Contracts.—Where a vendor takes the purchaser's notes for part of the price, agreeing to deed the land when the notes are paid, and, before any of them are due, he makes a trust deed of the land, the purchaser can rescind the contract.—FT. PAYNE COAL & IRON CO. v. WEBSTER, Mass., 39 N. E. Rep. 786.

247. VENDOR AND VENDEE—Equitable Conversion.—Though a contract for the sale of land provided that, on the vendee's failure to pay the price at the stipulated time, all his interests thereunder shall cease, the interest of the vendor, on his death before the time named for payment, is to be treated as personalty, there being no default by the vendee.—WILLIAMS v. HADDOCK, N. Y., 39 N. E. Rep. 825.

248. WATERS — Obstruction of Stream. — Plaintiff owned a warehouse on the bank of a stream, several hundred yards above the point at which defendant's railroad crossed the stream on an embankment, under which were two culverts to allow passage to the water. In an extraordinarily severe freshet, plaintiff's warehouse was flooded, and his goods damaged: Held, that plaintiff could not hold defendant liable for such damage without showing, affirmatively, that the damage would not have occurred if there had been no embankment or no obstruction in the culverts. — MORRIS v. RECEIVERS OF RICHMOND & D. R. CO., U. S. C. C. (Va.), 65 Fed. Rep. 584.

249. WATERS — Riparian Ownership. — The title of a riparian owner on a nontidal, navigable river extends to ordinary low-water mark.—GIBSON v. KELLY, Mont., 39 Pac. Rep. 517.

250. WILLS—Charge on Realty.—A will provided that a certain bequest should be paid out of personal property on hand after the death of the testator's wife, before any division of the personal property: Held to be a demonstrative, not a specific, legacy; and, there being nothing in the will to show an intent to charge with this legacy land specifically devised, it was not chargeable upon the real estate, upon failure of the personal property to pay it.—HIBLER v. HIBLER, Mich., 62 N. W. Rep. 361.

251. WILL — Devise of Income — Trust. — Testator, in article 7 of his will, directed that his executors should take charge of certain lands. The article also provided that the income from the lands should be used in payment of the taxes, and in reduction of a mortgage thereon, "until the estate is disposed of by" the executors, and that the net income therefrom should be paid to his wife and the heirs of his mother. The eleventh article authorized the executors to sell all of testator's lands except those mentioned in article 7. All the other property given to the wife, except one item, was for life merely: Held, that the trust as to the wife's interest in the land named in article 7 continued during her life.—PERKINS v. STEARNS, Mass., 39 N. E. Rep. 1016.

252. WILLS — Determination of Devisees. — Where a testator devises land to his daughters, and, "on both their decease" without issue, to his heirs, since the daughters take a defeasible fee, and the heirs take by way of executory devise, the heirs are to be determined as of the date of the death of the surviving daughter, and not as of the date of the testator's death.—DEWOLF v. MIDDLETON, R. I., 31 Atl. Rep. 271.

223. WILLS—Estate Devised—Curtesy.—A testator devised land to his daughter H, her heirs and assigns, forever, "providing that she dies leaving lineal heirs of her body"; but, in case she dies "leaving no child or children or descendants," he gave the land to others: Held, that the daughter H took an estate tail.—HOLDEN v. WELLS, R. I., 31 Atl. Rep. 265.

254. WILL—Mental Capacity.—On an issue as to the mental capacity of testatrix, where it appeared that the will was not drawn by her, but there was evidence from which the jury could infer that it was drawn by her direction, testimony that she previously, and while in sound mind, had expressed a desire to dispose of her property by will, in such way as was done in the will, is admissible to show a disposing memory at the time of the execution of such will.—BROWN v. MITCHELL, Tex., 29 S. W. Rep. 927.

255. WILL—Nature of Estate.—A testator devised certain property to his grandniece, and declared: "All of which is to go to her children should she marry. If she should die childless, then it is to be divided" between certain other persons: Held, that she took a life estate, and that the remainder would not vest till her death.—FURNISH v. ROGERS, Ill., 39 N. E. Rep. 989.

256. WILL—Revocation.—Under article 1691, Rev. Civ. Code, as explained by subsequent articles, there are only two modes of revoking a valid testament,—the one by a written instrument, clothed with the formalities of a last will and testament; and the other by donation *inter vivos*, or a sale in whole or in part of the thing bequeathed.—SUCCESSION OF HILL, La., 16 South. Rep. 819.

257. WILLS — Signature by Third Party. — Where the signature of a witness to a will, who is unable to write, is written, at his request, by another person, and the witness neither touches the pen nor the hand of the person who does not writing, the subscription is invalid.—MCFARLAND v. BUSH, Tenn., 29 S. W. Rep. 899.

258. WILLS—Spendthrift Trust.—Where a will devises property to J, to hold in trust for testatrix's husband, free from liability for certain debts due by him to third persons, but gives him the property absolutely in case he fully pays all such debts, the absolute title does not vest in him, unless payment of such debts is made during his life.—JOHNSON v. GOOCH, N. Car., 21 S. E. Rep. 39.

259. WITNESS — Conviction of Crime. — A demand by defendant's counsel that, before the exclusion of a witness' testimony on the ground that he has been convicted of larceny, record evidence of his conviction be produced by the State, is sufficient as an exception to the exclusion of his testimony in the absence of such record evidence.—BOYD v. STATE, Tenn., 29 S. W. Rep. 901.